The Commonwealth of Massachusetts

DEPARTMENT OF PUBLIC UTILITIES

April 15, 1998

D.P.U./D.T.E. 97-82

A Complaint and Request for Hearing of Cablevision of Boston Company, Cablevision of Brookline Limited Partnership, A-R Cable Partners, Cablevision of Framingham, Inc., A-R Services, Inc., MediaOne of Massachusetts, Inc., MediaOne of Milton, Inc., MediaOne of Needham, Inc. and Time Warner Cable pursuant to G.L. Chapter 166 § 25A and 220 C.M.R. § 45.04 of the Department's Procedural Rules seeking relief from alleged unlawful and unreasonable pole attachment fees, terms and conditions imposed on Complainants by Boston Edison Company.

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I. INTRODUCTION

On October 15, 1997, pursuant to G.L. c. 166, § 25A and 220 C.M.R. §§ 45.00 et seq., Cablevision of Boston Company, Cablevision of Brookline Limited Partnership, Cablevision of Framingham, Inc., A-R Services, Inc., MediaOne of Massachusetts, Inc., MediaOne of Milton, Inc., MediaOne of Needham, Inc. and Time Warner Cable (collectively, the "Complainants") filed an Amended Complaint[1] and Request for a Hearing[2] with the Department of Public Utilities, now the Department of Telecommunications and Energy, (the "Department") against Boston Edison Company ("BECo") seeking relief from BECo's cable television ("CATV") pole attachment rates, terms and conditions. The Attorney General of the Commonwealth ("Attorney General") filed a notice of intervention in the proceeding, pursuant to G.L. c. 12, § 11E.

In 1978, the Massachusetts Legislature enacted the "Pole Attachment Statute", G.L. c. 166, § 25A. This statute gives the Department the authority "to regulate the rates, terms and conditions applicable to attachments," as well as to "determine and enforce reasonable rates, terms and conditions of use of poles..." As a result of a rulemaking proceeding, CATV Rulemaking, D.P.U. 930 (1984), the Department adopted the pole attachment dispute regulations now codified as 220 C.M.R. §§ 45.00 et seq. However, in

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[1] The parties agreed that Complainants would file an Amended Complaint triggering a new six-month period for review of the case pursuant to 220 C.M.R. § 45.08. As further agreed by the parties, the relief, if any, to which Complainants are found entitled will relate back to August 1, 1997, the date of the filing of the original Complaint (see Tr. Procedural at 5-11 (October 8, 1997)).

[2] The request for a hearing was made pursuant to 220 C.M.R. § 45.04(2)(g) which provides that the Complainants must request a hearing pursuant to 220 C.M.R. § 1.06, or waive the right to such a hearing.

CATV Rulemaking, supra, the Department declined to determine a specific method of calculation for pole attachment rates, instead leaving the method(s) to be determined by adjudication. Id. at 14-15. This matter is the first aerial pole attachment complaint received pursuant to those regulations and the first instance in which the Department has been asked to review BECo's pole attachment rates.[3]

The Complainants, nine CATV companies serving approximately 342,000 customers in 47 communities located in the BECo service territory, enter into license agreements for the use of CATV attachments on BECo-owned poles[4] (RR-DTE-1). For the past 25 years BECo's annual attachment rate has been $8.00 per CATV attachment for a solely-owned ("SO") pole (Exh. BE-24). On October 28, 1996, BECo notified the Complainants of a 30 percent increase in its annual SO pole attachment rate to $10.37, effective January 1, 1997, giving rise to the present complaint (Amended Complaint at ¶¶ 15-17; Exh. CABLE-1, at 10). Specifically, the Complainants request that the Department: (1) find BECo's pole attachment rate increase and pre-existing pole attachment rates unlawful and unreasonable; (2) set an annual pole attachment rental rate not exceeding BECo's actual incremental costs incurred in providing space for attachment of Complainants' facilities, or in the alternative, set annual pole attachment rental rates not exceeding the amount of $6.27 per SO pole and $3.14 per jointly-owned ("JO") pole; (3) order BECo to refund to Complainants, as of January 1, 1997, all

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[3] In Greater Media, Inc., D.P.U. 91-218 (1992), the only other case arising under G.L. c. 166, § 25A to date, the Department approved a method for calculating rates for CATV attachments within underground conduit.

[4] While certain of the poles in question are solely-owned by BECo, a majority of the poles are jointly-owned by BECo and New England Telephone and Telegraph Company d/b/a Bell Atlantic-Massachusetts (see Exh. AG-8).

amounts paid by Complainants in excess of the maximum annual pole attachment rates that are established as a result of this adjudication; (4) order BECo to bill Complainants for JO poles no more than 50 percent of the SO pole attachment rate established as a result of this adjudication;[5] (5) order BECo to provide information concerning rates, terms and conditions pursuant to which BECo provides access to poles, conduits and rights-of-way between BECo and BECo's affiliates, subsidiaries and/or other entities engaged with BECo in the provision of telecommunications, cable, or open video system services;[6] (6) determine terms and conditions that BECo may impose upon Complainants under its pole licenses and related practices in order to prevent discrimination against the Complainants and in favor of BECo, BECo's affiliates, subsidiaries, and other entities; (7) order BECo to refrain from acting, or refusing to act, in a manner that in any way prejudices Complainants' rights under their pole attachment license agreements; and (8) order any other relief as it deems just, reasonable, and proper (Amended Complaint at 13-15). On October 31, 1997, BECo filed an answer to the Amended Complaint in which it denied that its current or proposed aerial pole attachment rates, terms, or conditions were unlawful or unreasonable and asked that Complainants' requests for relief be denied (BECo Answer to Amended Complaint at ¶¶ 1-34).

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5 Prior to this adjudication, BECo charged Complainants 57 percent of its SO pole rate for JO poles (Exh. CABLE 3-5, App I). A determination of the JO pole rate is no longer at issue in this case as BECo has agreed to bill Complainants for JO poles no more than 50 percent of the SO pole attachment rates established as a result of this adjudication (BECo Brief at 12; BECo Reply Brief at 22).

6 This information was provided to the Complainants and the Department by BECo during the course of the discovery process in this proceeding (Tr. 4, at 37).

On February 11, 1998, the Department issued an interlocutory order limiting the scope of the current proceeding to whether the pole attachment rates, terms, and conditions that BECo currently charges the Complainants are just and reasonable pursuant to G.L. c. 166, § 25A. Order on Scope of the Proceeding (February 11, 1998) ("Scope Order").

Pursuant to notice duly issued, a public hearing was held at the Department's offices on October 8, 1997, to afford interested persons an opportunity to comment. Five days of evidentiary hearings were held at the Department's offices on February 2, 4, 5, 12, and 18, 1998. In support of their Amended Complaint, the Complainants presented the testimony of two witnesses: Paul Glist, an attorney whose practice concentrates in the area of pole attachments; and Robert Thomas, a former New England Telephone employee and current MediaOne manager. BECo presented the testimony of three witnesses: Michael Harris, a senior economist with the Reed Consulting Group; Richard Schifone, a BECo supervisor of rights and permits; and Richard Hahn, a vice-president of technology and research at BECo and president of BECoCom, Inc.[7] The Attorney General did not sponsor any witnesses. The evidentiary record consists of 101 exhibits sponsored by the Complainants, 109 sponsored by BECo, 10 exhibits sponsored by the Attorney General, and 35 exhibits sponsored by the Department. All parties filed briefs and reply briefs.

II. OUTSTANDING PROCEDURAL MATTERS

On March 13, 1998, after the close of hearings and submission of reply briefs, Complainants filed "Motions of Cablevision of Boston, Inc., et al. to Strike Portion of Boston

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[7] BECoCom is a wholly owned subsidiary of Boston Energy Technology Group, which in turn is a wholly owned subsidiary of BECo (Exh. BE-6, at 1).

Edison Company Reply Brief and for Admission of Corrected Exhibit" ("Complainants' Motion"). On March 18, 1998, BECo filed "Boston Edison's Opposition to Complainants' Motions to Admit New Exhibit and to Strike Portions of Boston Edison's Reply Brief" ("BECo Opposition"). For reasons we discuss below, Complainants' Motion to Strike is DENIED, and Complainants' Motion to Admit Corrected Exhibit is DENIED.

A. Motion to Strike

1. Positions of the Parties

The Complainants move to strike the Attachments to BECo's Reply Brief and related legal argument on page 37, alleging that these documents are not part of the record (Complainants' Motion at 1). The Complainants argue that by attaching these documents, BECo did not follow the Department's procedural rules for seeking the admission of late-filed documents into the record, 220 C.M.R. §§ 1.11(7)-(8) (id.). The Complainants argue that these materials must be stricken from the record as they have not had an opportunity to conduct cross-examination of BECo's witnesses concerning these documents, and that, therefore, their admission would be prejudicial (id.).

BECo argues that the exhibits, consisting of four letters concerning the involvement of local wiring inspectors in the area of aerial distribution plant safety, and related legal argument, should be allowed because they are not offered for their substance, but instead are offered only to show that the documents exist (BECo Opposition at 1, 10). In seeking to address the Complainants' anti-competitive claims, BECo argues in its reply brief that the controlling authority on issues of aerial distribution plant safety is not the Department, but rather the local wiring inspectors (BECo Opposition at 10, citing BECo Reply Brief at 36-37). As support for

this argument, BECo appended to its reply brief the letters which it alleges were "not available during the presentation of evidence in this matter" (BECo Opposition at 10, citing BECo Reply Brief at 37 n.29). Finally, BECo argues that the Complainants suffer no harm by reference to the appended letters because the Department has excluded the Complainants' anti-competitive claims from this proceeding (BECo Opposition at 11, citing Scope Order).

2. Analysis and Findings

The Department's Procedural Rules state that "[no] person may present additional evidence after having rested nor may any hearing be reopened after having been closed, except upon motion and showing of good cause." 220 C.M.R. § 1.11(8). In addition, the Ground Rules in this case provide that: "[e]xhibits offered after the close of the hearings, if objected to by any party, labor under a heavy burden of untimeliness, for they would not be subject to cross-examination or rebuttal" Ground Rules at 4 (October 14, 1997).

We agree with the Complainants that BECo failed to follow the proper Department procedures for offering late-filed exhibits. We also find that, not having moved to admit the documents pursuant to 220 C.M.R. § 1.11(7) or (8), BECo improperly relied in its brief on matters that are not part of the factual record in this case. However, the Complainants will suffer no prejudice if BECo's unredacted brief remains in the Department's files, as the attachments were never made part of the factual record and would not be relied upon in any later proceeding. Further, we conclude that the Complainants' motion is moot. As we discussed in our Scope Order, the Department has deferred consideration of the Complainants' anti-competitive claims to another proceeding. The documents that are the subject of this

motion concern claims that are outside of the scope of this proceeding, and the Department did not rely on or consider the documents in reaching its decision in this case.[8] Because the Department finds that the issue of admissibility of these late-filed documents is moot, the Complainants' Motion to Strike is DENIED.

B. Motion to Admit Corrected Exhibit

1. Positions of the Parties

Citing 220 C.M.R. §1.06(c)(5), the Complainants request that the Department supplement the record with their proposed Exhibit CABLE-85A. The Complainants argue that the information provided by BECo on February 13, 1998, in its supplemental response to Information Request Cable 1-10 dealing with pole count information (identified in the record as CABLE-102) is "mathematically inaccurate, inconsistent with other record information and cannot be reconciled" (Complainants' Motion at 1-2). The Complainants argue that discovery of this putative error in BECo's supplemental discovery response is good cause to permit the Complainants to supplement the record with their revised Exhibit CABLE-85A showing what they argue to be the lawful pole attachment rate based on their correction of BECo's erroneous data (Complainants' Motion at 2-4).

BECo argues that the Complainants should not be allowed to supplement the record after the close of evidence because their proposed exhibit is substantive evidence that directly

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[8] See Boston Edison Company, D.P.U. 89-1A-1, at 6-7 (1989) (admissibility of late-filed exhibit moot where document not relied on or considered in reaching decision); MES-McCourt, Inc. D.P.U. 88-229/252, at 9 (1989) (allowing inclusion in record of late-filed exhibits even though opposing party had not had opportunity to cross-examine the new evidence, because no prejudice to the moving party would result from admission).

contradicts the Complainants' position on issues affecting the Complainants' proposed rate (BECo Opposition at 1-2). BECo argues further that the Complainants are not, in fact, updating a factual discovery response, but rather are attempting to use 220 C.M.R. § 1.06(c) to present further opinion testimony without subjecting their witness to cross-examination (id. at 1-3).

2. Analysis and Findings

We agree that Complainants' reliance on 220 C.M.R. §1.06(c)(5) is misplaced. This discovery rule states: "A party is under a continuing duty to amend seasonably an early response if it obtains information that the response was incorrect or incomplete when made, or that the response, though correct when made, is no longer true or complete." 220 C.M.R. §1.06(c)(5). The Complainants are not updating a discovery response; they are attempting to reopen the record and submit additional evidence. As discussed above, 220 C.M.R. §§ 1.11(7) and (8) allow parties to offer evidence after the close of hearings only upon motion and a showing of good cause. The Complainants filed no such motion. Even if they had, we would find no good cause to admit additional evidence after the record has been closed. The Complainants' reasons for introducing this late-filed exhibit are unpersuasive. BECo supplemented its initial discovery response to Information Request Cable 1-10 on February 13, 1998, before the close of the evidentiary hearings. Because this discovery response was supplemented so late in the proceedings, the Hearing Officer allowed the Complainants to present testimony and a related exhibit (CABLE-85) concerning BECo's response (Tr. 5, at 9 et seq.). During the course of this testimony, the Complainants' witness presented opinion

evidence that the response was incomplete and incorrect (Tr. 5, at 9-17). We find, therefore, that the Complainants have had sufficient opportunity to present evidence on these issues.

The Department has consistently held that late-filed exhibits are prejudicial because other parties cannot conduct cross-examination or otherwise test the accuracy of the data contained in the proffered exhibits through the litigation process. See New England Telephone & Telegraph Co. d/b/a NYNEX, D.P.U. 94-50, at 62 (1995). The Complainants' motion, although made in the form of a supplemental discovery filing, presents such a prejudicial danger and is, therefore, DENIED.

III. RATE METHOD

A. State Regulatory Background

The Massachusetts pole attachment statute provides the Department with authority to regulate the rates, terms, and conditions applicable to attachments and requires that the Department consider the interests of subscribers of CATV services as well as the interests of consumers of utility services. G.L. c. 166, § 25A. In determining a just and reasonable rate, the statute requires that the rate recover "the additional costs of making provisions for attachments" (i.e., marginal or incremental cost) and no more than "the proportional capital and operating expenses of the utility attributable to that portion of the pole...occupied by the attachment" (i.e., fully allocated cost) Id. Further, "[such] portion shall be computed by determining the percentage of the total usable space on a pole...that is occupied by the attachment." Id. The pole attachment regulations provide for a complaint proceeding[9] under

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[9] Review by the Department of such a complaint can be conducted, at the election of the parties, without hearings. 220 C.M.R. § 45.06(1).

which an attachment rate maximum can be determined through the use of data inputs from the Federal Communications Commission ("FCC") Form M (telephone company) or the Federal Energy Regulatory Commission ("FERC") Form 1 (electric company) annual reports. 220 C.M.R. § 45.04.

B. Positions of the Parties

1. Complainants

a. Incremental Costs

The Complainants argue that the Department should set the pole attachment rate at the lower end of the permissible statutory spectrum representing a marginal or incremental cost (Complainants' Brief at 69, citing Exh. CABLE-1, at 14, 17, 22-23). The Complainants argue that the Department should cap pole attachment rates at BECo's identifiable recurring costs incurred "but for" CATV attachments because the out-of-pocket (or "makeready") costs for pole attachments are already directly paid for by cable operators (Complainants' Brief at 70-71, citing Exhs. CABLE-1, at 18-19, DTE-11). In support of an incremental rate, the Complainants argue that CATV attachments place the least burden on utility lines and that CATV operators should pay less for the "vastly inferior" attachment rights that they are afforded by the utility (Complainants' Brief at 71-72, citing Exhs. CABLE-1, at 21, DTE-11, Tr. 1, at 58-59). The Complainants state that BECo's incremental costs associated with pole attachments are approximately $.50 annually per SO pole (see Exhs. CABLE-1, at 23, CABLE-41, at 38; Tr. 2, at 61-62; Tr. 1, at 211).

b. Fully Allocated Costs

As an alternative, should the Department decline to adopt incremental cost pricing, the Complainants propose that the Department adopt the FCC method for determining pole attachment rates (Amended Complaint at ¶¶ 18-23). According to the Complainants, the FCC formula derives annual "fully allocated" pole costs based upon existing utility records (the FERC Form 1) and allocates those costs in proportion to CATV's relative use of usable space on poles (Complainants' Brief at 8). The Complainants allege that the FCC method is "exactly the mechanism prescribed by statute for Massachusetts" and that this method previously has been followed by the Department in Greater Media Inc., D.P.U. 91-218 (1992) (Complainants' Brief at 8). As further support for the Department's adoption of the FCC formula, the Complainants argue that this method is the most widely accepted and applied formula for developing the fully allocated cost of pole attachments, as it is applied by the FCC directly in 31 states, and it is used generally by many states that regulate pole attachments (id. at 16, citing Amended Complaint at ¶ 9, Exh. CABLE-1, at 24).

The Complainants allege that in generating their proposed rate, they have applied the FCC formula "to the letter" (id. at 22, citing Exh. CABLE-1, at 26-42). The Complainants propose a strict application of the FCC formula in Massachusetts, arguing that it is the product of over 20 years of federal rulemaking expertise (Complainants' Brief at 8). Applying the Complainants' interpretation of the FCC pole attachment formula generates a yearly rate of

$5.67[10] per attachment per SO pole (id. at 23, citing Exh. CABLE-85). The Complainants argue that their recommended rate would not unduly impact BECo ratepayers because even at current levels "pole revenues equate to no more than one cent of a monthly residential electric bill" and would have a minor impact upon BECo's total revenues (Complainants' Brief at 78; Tr. 1, at 205). The Complainants also assert that their recommended lower rate would benefit CATV customers because it could result in potential savings to their customers who now pay on average 45 cents of their standard monthly bill to account for pole attachments (id.).

2. BECo

a. Incremental Costs

BECo argues that an incremental approach to pole attachment rates is improper because it would create a situation whereby utility ratepayers would be forced to subsidize the CATV operator's enjoyment of poles (BECo Brief at 26-27, citing Exh. BE-5, at 18). BECo argues that the Department, the FCC, and every state commission to consider an incremental approach to pole attachment rates has declined to adopt it (BECo Brief at 26, citing Exh. CABLE-1, at 18, 23, and Greater Media).

b. Fully Allocated Costs

Like the Complainants, BECo argues that the Department should adopt the FCC method, which is designed to capture the fully-allocated costs of pole attachments (BECo Brief

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[10] The rate proposed by Complainants during the course of hearings and argued for in their briefs is different from the initial rate of $6.27 per SO pole presented in their Amended Complaint (Amended Complaint at ¶ 34(b)). This difference in rates is due to adjustments in various data inputs to their formula made during the course of hearings (see Exh. CABLE-85).

at 5, citing In re Matter of Amendment of Rules and Policies Governing Pole Attachments, FCC 97-94, CS Docket No. 97-98 (1997)). However, unlike the Complainants, BECo argues that the FCC formula should be used as only a starting point in the determination of a lawful and reasonable rate for pole attachments in Massachusetts (BECo Reply Brief at 1, citing Tr. 3, at 51, 83). BECo argues that the FCC formula does not sufficiently capture all of the costs incurred by utilities in erecting poles and therefore proposes several modifications or additions to the formula designed to capture these costs (BECo Brief at 5). Also, although BECo recommends using a modified federal approach, it argues that the Department is not bound by the confines of the federal method as Massachusetts has certified to the FCC that it regulates pole attachment rates at the state level (BECo Reply Brief at 1-2)

Applying BECo's modifications to the FCC pole attachment formula generates a yearly rate of $9.58 per attachment per SO pole[11] (BECo Brief at 6). BECo argues that the rate recommended by Complainants does not fairly balance the interests of utility customers and CATV subscribers (see BECo Reply Brief at 25-28).

3. Attorney General

a. Incremental Costs

The Attorney General argues against the Department adopting an incremental approach to pricing pole attachment rentals in this matter (Attorney General Brief at 5-7). The Attorney General argues that adopting an incremental approach would "essentially turn the poles that

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[11] While BECo originally proposed an annual SO pole rate of $10.37 and still argues that the Department should conclude that this is an appropriate rate, it does not argue in its briefs for adoption of the method used to calculate this rate (see BECo Brief, BECo Reply Brief).

entities pay for into free public goods" and would "allow free riding by another consumer of a monopoly service" (Attorney General Brief at 5).

b. Fully Allocated Costs

While the Attorney General argues that CATV attachment rates should reflect the fully allocated costs of that portion of a pole's usable space utilized by the attacher, he does not believe that the Department should strictly apply the FCC method to develop a fully allocated rate (Attorney General Reply Brief at 3). The Attorney General argues that the FCC method advocated by the Complainants is flawed as it ignores costs that are customary for the Department to review and that could be incorporated without adding any undue burden to the rate setting process (Attorney General Brief at 4, citing Exh. BE-1, at 3, 20). The Attorney General also argues that the FCC formula is a historical cost-based ratemaking solution that has little, if any, connection to the competitive or efficient economic price that should be charged for pole attachments (Attorney General Brief at 4, citing Exh. BE-1, at 21, Tr. 3, at 51, 83). Finally, the Attorney General argues that the FCC formula should not be used because it is currently under consideration for revision by the FCC (Attorney General Brief at 4-5, citing Exh. BE-1, at 3, FCC Report and Order, CS Docket 97-151, ¶ 83 (1998)).

Like BECo, the Attorney General proposes a method that modifies the federal formula adding to several of the cost categories to reflect what he argues is a more fully allocated rate (Attorney General Reply Brief at Att. A). Applying the Attorney General's method for fully allocated pole costs generates a yearly rate of $12.54 per attachment per SO pole (id.).

C. Analysis and Findings

1. Incremental Costs

Within the statutory and regulatory confines of G.L. c. 166, § 25A and 220 C.M.R. §§ 45.00 et seq., the Department has extensive freedom to adopt a mechanism for determining pole attachment rates. Although it is clearly within the Department's discretion, we decline to adopt an incremental approach to pole attachment ratemaking at this time.. With respect to the Complainants' request that the Department set rates below fully allocated costs to reflect, among other things, what Complainants characterize as the "vastly inferior status" of CATV attachers, we find that the record does not support such a modification to the rates.

CATV operators enjoy a certain benefit from their ability to attach to poles and, therefore, under current ratemaking standards, it is appropriate for them to pay a share of the costs incurred in erecting and maintaining these poles. As noted, in setting a rate, the Department must consider the interests of CATV subscribers as well as the interests of consumers of utility services. G.L. c. 166, § 25A. In Greater Media, the Department has previously declined to set conduit rates at less than fully allocated costs. Greater Media at 33. While the Department recognizes that changes in competitive market structures and the regulatory environment may cause an incremental cost approach to be reconsidered in the future, no compelling showing has been made in this case to warrant the implementation of an incremental cost-based rate for pole attachments. For reasons we discuss below, the Department will use fully allocated costs to set BECo's pole attachment rates.

2. Fully Allocated Costs

a. Summary of Methods

As a general principle, BECo, the Complainants and, to a lesser extent, the Attorney General, agree that some version of the FCC pole attachment formula is an appropriate method to capture fully allocated pole attachment costs. In fact, the vast majority of testimony and other evidence presented in this matter concerned the proper application of the FCC formula. In general terms, each of the methods proposed by the parties to calculate a pole attachment rate involves three steps: (1) placing an average value on a utility's investment in poles (i.e., costs of bare poles and the costs to install the poles); (2) developing an annual carrying charge to recover the ongoing cost of poles (i.e., a utility's cost of capital, depreciation, taxes, operation and maintenance expenses); and (3) allocating the costs among the utility and others using the pole to attach their lines and facilities. This method is consistent with the basic method used by the FCC. In each of the methods recommended by the parties, the pole attachment rate is equal to the product of the net investment per bare pole multiplied by the carrying charge percentage, multiplied by the allocation factor. The parties differ, however, in the recommended inputs to the three steps of the formula. The specifics of these differences are discussed in detail in Section IV, below.

b. Jurisdiction and Department Precedent

Massachusetts possesses and exercises the authority to regulate pole attachment rates, terms and conditions at the state level.[12] See G.L. c. 166, § 25A; 220 C.M.R. §§ 45.00

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[12] For a more detailed discussion of Massachusetts and federal jurisdiction in the area of pole attachment regulation, see Scope Order.

et seq.; States That Have Certified That They Regulate Pole Attachments, Public Notice, 7 F.C.C. Rcd. 1498 (1992). The majority of the provisions in G.L. c. 166, § 25A and 220 C.M.R. §§ 45.00 et seq. mirror the federal statutory and regulatory provisions governing pole attachments, and, therefore, the Department finds that the FCC formula falls well within the statutory and regulatory confines governing pole attachments in Massachusetts. See 47 U.S.C. § 224; 47 C.F.R. 1.1401, et seq. However, because Massachusetts chooses to exercise jurisdiction in the area of pole attachment rates, terms, and conditions, the Department is free to adopt a ratesetting mechanism that incorporates some, all, or none of the FCC formula.

In the only other case to date arising under the pole attachment statute, the Department followed a method similar, but not identical, to the FCC's pole attachment approach for calculating the maximum attachment rate for CATV attachments within underground conduit. See Greater Media at 32-40).[13] In Greater Media, the Department found that the range of rates authorized by statute, from a low of incremental cost to a high of fully allocated cost, enabled it to assure that the utility recovers any additional costs caused by the attachment of a third party's cable to the utility's poles, while also assuring that the attaching party is required to pay no more than its proper share of the fully allocated costs. Greater Media at 32-33.

In Greater Media, the Department concluded that reliance on publicly available utility annual report data is preferable to rate formulas dependent upon internal utility information,

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[13] At the time of the Department's Greater Media investigation, the FCC had never adjudicated a conduit rate compliant. See In re Multimedia Cablevision, Inc. v. Southwestern Bell Telephone Company, Memorandum Opinion and Hearing Designation Order, CS Docket No. 96 PA 95-008, at ¶ 3 (September 3, 1996).

Id. at 34. Finding a limited impact of attachment rates on the overall utility revenues at issue in that case along with the gain in simplicity from using annual report data, the Department opted to use the utility's annual report to regulators as the data source for the calculation of conduit net investment, carrying charges (other than rate of return) and usable space. Id. As a result of this reliance upon utility annual reports as a basis for attachment rate calculations, the Department was not only able to establish reasonable conduit attachment rates, but also to put into place a mechanism by which conduit attachment rates could be adjusted annually thereafter without the need for costly adjudications. Id. at 40.

c. Aerial Pole Attachment Formula

By this Order, the Department establishes a method designed to capture the fully-allocated costs of aerial pole attachments which is based on, but not precisely identical to, the federal approach being used by the FCC. The specifics of the application of this formula are discussed in Section IV, below.

The Department finds that basing our method for determining aerial pole attachment rates on the federal method is consistent with the Department's earlier decision in Greater Media, and more importantly, is consistent with the Massachusetts pole attachment statute and regulations, G.L. c.166, § 25A and 220 C.M.R. §§ 45.00 et seq. Using the method based on the federal approach to pole attachment rates, which is outlined below, meets Massachusetts statutory standards as it adequately assures that BECo recovers any additional costs caused by the attachment of Complainants' cables to BECo's poles, while assuring that the Complainants are required to pay no more than the fully allocated costs for the pole space occupied by them.

The intent of the Department, as expressed in Greater Media, is to promote the goal of resolving pole attachment complaints by a simple and expeditious procedure based on public records so that all of the parties can calculate pole attachment rates as prescribed by the Department without the need for our intervention. These are sound policy reasons which are consistent with 220 C.M.R. §§ 45.00 et seq. While no approach is without administrative difficulties, the Department finds that the FCC method simplifies the regulation of pole attachment rates as much as possible by adopting standards that rely on publicly available FERC Form 1 data.[14] The Department finds that adopting a method that relies on publicly available data will facilitate the resolution of pole attachment rate complaints without the need for costly hearings. We depart from the FCC method when additional costs or adjustments to the federal method are justified on state policy grounds, and are consistent with our goal of relying on publicly available data.

By exercising our discretion, based on independent state grounds, to model our method on the FCC formula, the Department is not relinquishing its jurisdiction over pole attachment matters and is free to depart from the federal approach in the future should circumstances warrant to protect the public interest. In addition, the Department finds that proposed or future changes in the federal formula are not controlling in this case and are not persuasive for the purposes of setting current pole attachment rates.

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[14] Or, in the case of telephone companies, Form M data.

IV. APPLICATION OF RATE METHOD

A. Average Value of BECo Investment in Poles

1. Summary of Issues

As an initial step in calculating a fully allocated rate, each of the parties calculates a value for BECo's net investment per bare pole. According to the FCC, a figure for net investment in bare pole plant is calculated by subtracting accumulated depreciation, accumulated deferred taxes, and the cost of appurtenances from gross pole investment. In re Amendment of Rules and Policies Governing the Attachment of Cable Television Hardware to Utility Poles, 2 FCC Rcd at App. A (1987). Net investment in bare pole plant is then divided by the number of pole equivalents to generate a value for net pole investment per bare pole. Id.

All parties agree that the baseline for the calculation of net pole investment is $65,539,254, which is taken from FERC Account 364 (Poles, Towers, Fixtures) of BECo's 1995 FERC Form 1 (Exh. CABLE-85; RR-DTE-8; Attorney General Brief at 10, citing FERC Form 1, at 207). The parties disagree, however, as to whether a surcharge or adjustment representing initial tree trimming and grounding costs should be added to the value for net pole investment. The parties also disagree as to the proper accounts used to calculate accumulated depreciation for poles and the proper accounts used to calculate accumulated deferred taxes for poles. Finally, the parties dispute the number of BECo's SO poles. Based

on findings discussed below, the Department finds that BECo's value for net investment per bare pole is $277.[15]

2. Tree Trimming

a. Introduction

Tree trimming costs related to maintenance of the lines are included in the maintenance component of the carrying charge and are not in dispute (BECo Brief at 7, citing Tr. 3, at 57; Complainants' Brief at 41, citing Exh. CABLE-41, at 19-21; Attorney General Brief at 11). The issue raised by the parties is whether the method applied by the Department to calculate net pole investment should include the initial costs of tree trimming (i.e., is the costs to clear the lines of trees when the poles were first erected).

b. Positions of the Parties

i. Complainants

The Complainants argue that BECo's proposal to include the initial tree trimming costs in gross pole investment should not be allowed (Complainants' Reply Brief at 25). The Complainants contend that the FCC formula does not allow for the type of "initial" tree trimming surcharge that BECo proposes (Complainants' Reply Brief at 22, citing RR-DTE-12). The Complainants also argue that the FCC formula already allows for recovery of tree trimming costs through the maintenance component of the carrying charge (Complainants' Reply Brief at 22). In addition, the Complainants state that BECo has failed to

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15 Net investment in bare poles of $33,821,595 divided by 122,098 pole equivalents results in a value for net investment per bare pole of $277.

provide any credible factual evidence in support of its proposed surcharge and argue that there is no way for the Department to verify BECo's inflated estimates (id. at 24, 26).

ii. BECo

BECo contends that the initial cost of tree trimming should be added to the calculation of net pole investment as an additional category or surcharge (BECo Brief at 7, citing Tr. 3, at 57). BECo argues that FCC Account 2411 (used for telephone companies) includes "the cost of clearing pole line routes and of tree trimming," but that the corresponding FERC Account 364 (used in the electric utility formula) does not include the initial cost for tree trimming (BECo Brief at 7). Because these costs are not accounted for separately, BECo makes an "estimation" of these initial costs by taking the average of the Company's tree trimming and maintenance costs for 1994 and 1995, multiplying the result by three, and adding this value to FERC Account 364 (id. at 8). This adjustment adds an additional $4,545,166 to the gross pole investment value (id.). BECo argues that this proposed adjustment is a conservative estimate since it "significantly understates the actual initial tree-trimming costs" (id. at n.7). However, BECo asserts that any underestimation is countered by the fact that the proposed addition is in today's dollars and, therefore, overstates the costs that would have been incurred historically (id.).

iii. Attorney General

The Attorney General argues that the BECo's proposed tree trimming adjustment should be included in the calculation of net pole investment (Attorney General Brief at 11, citing Exh. BE-5, at 29-31). The Attorney General states that the cost of a pole attachment is more than the pole itself and should include adjustments for expenses that are not present in

Account 364 (Attorney General Brief at 11). The Attorney General states that the Complainants, like BECo, have included additional expenses not contained in FERC accounts in their calculation of the pole attachment rate (id.). The Attorney General argues that any inclusion by the Complainants of expenses not originally included in a specific FERC account is an acknowledgment that adjustments, similar to BECo's proposed tree trimming adjustment, may be appropriate (id.).

c. Analysis and Findings

While the Department finds, in principle, that the initial costs of tree trimming should be included in the calculation of a fully allocated pole attachment rate, BECo has provided insufficient evidence to establish its estimate of the initial cost of tree trimming sufficient to permit Department reliance on it. For the Department to include a value for the initial cost of tree trimming, we would have to devise our own estimate for these costs; however, there is insufficient record evidence to allow us to calculate a reasonable value for the initial cost of tree trimming. In addition, the FCC does not include a surcharge for the initial cost of tree trimming in its current application of its pole attachment rate formula.

Although there are some costs associated with initial tree trimming, the Department finds that taking the step of devising our own estimate for the initial costs of tree trimming would unduly complicate the pole attachment rate calculation process without materially increasing the accuracy of the final calculation. One of the Department's goals in this proceeding is to establish a pole attachment rate formula that is easily replicated and based on publicly available information. Therefore, the Department will not include an adjustment for initial tree trimming in the calculation of net pole investment.

3. Grounding

a. Introduction

The issue of including initial grounding expenses in net pole investment is similar to that of tree trimming. BECo proposes to include the initial costs of grounding as a surcharge or an addition to gross pole investment in the rate formula and the Complainants dispute this adjustment.

b. Positions of the Parties

i. Complainants

The Complainants argue that BECo's inclusion of a proposed grounding adjustment is contrary to the FCC formula and is not factually justified (Complainants' Reply Brief at 25-26). The Complainants argue that the FERC and the FCC treat grounding as a part of a utility's system of conductors rather than part of pole plant (Complainants' Reply Brief at 26). In addition, the Complainants claim that each attaching party is responsible for grounding its own conductors, making BECo's proposed addition unnecessary (id.). The Complainants argue that BECo has not provided any credible evidence to support the inclusion of its proposed grounding adjustment to gross pole investment (id.). Finally, because the adjustment is not based on publicly available information, the Complainants allege that including this adjustment would eliminate the possibility of efficient annual adjustments to the pole attachment rate (id. at 27, citing Greater Media at 40, 41).

ii. BECo

BECo argues that initial grounding expenses are a cost of poles and, therefore, should be included in a fully allocated rate. (BECo Reply Brief at 8, citing RR-D/TE-7). BECo argues

that because grounding is not included in FERC Account 364, it must be extracted from Account 365 and added to the gross pole investment value (BECo Brief at 8, citing RR-DTE-7, Exh. BE-5, at 30). Since BECo does not track grounding expenses directly, they must be estimated (BECo Brief at 8). To estimate the initial grounding cost, BECo multiplies its current grounding rod costs by one half, to reflect the original historic costs, and then further assumes that one half of the current pole population is grounded (id. at 9). This grounding rod cost is multiplied by the number of grounded poles to calculate the estimated initial grounding costs (id.). This calculation results in a proposed addition of $1,650,765 to the gross pole investment for initial grounding costs (id.).

iii. Attorney General

The Attorney General argues that it is necessary to include initial grounding costs in the calculation of gross pole investment (Attorney General Brief at 11, citing Exh. BE-5, at 29-31). The Attorney General argues that it is necessary to make adjustments to Account 364 to include expenses that are not tracked directly through Account 364 (id.).[16]

c. Analysis and Findings

The Department finds that BECo has provided insufficient evidence to establish its grounding adjustment. BECo's proposed grounding adjustment is based on speculative assumptions. The FCC does not currently include initial grounding costs in its calculation of the bare pole cost because grounds are not included in the pole line account.

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[16] The Attorney General has proposed to include an adjustment of $1,443,180 for grounding based on a calculation performed by BECo's witness (Attorney General Brief at 11). However, BECo updated its grounding adjustment based on a calculation error discovered during the proceedings (see RR-DTE-8). As a result, the Attorney General's proposed grounding adjustment is slightly lower than BECo's proposed adjustment.

As noted, one of the Department's goals in this proceeding is to establish a pole attachment rate formula that is easily replicated and based on publicly available information. Therefore, since BECo's proposed adjustment is not easily replicated or based on publicly available information, the Department finds that an adjustment for initial grounding costs will not be included in the calculation of net pole investment.

4. Accumulated Depreciation

a. Introduction

All parties agree with the basic method for calculating accumulated depreciation for poles; but, they differ regarding the use of total electric plant investment or total distribution plant investment as the basis of the calculation (BECo Brief at 9, citing Tr. 3 at 64, Exh. BE-5, at 27-28; Complainants' Reply Brief at 27- 28; Attorney General Brief at 11, citing Exh. BE-5, at 27-29).

b. Positions of the Parties

i. Complainants

The Complainants argue that BECo has miscalculated and understated the accumulated depreciation for poles by departing from the FCC formula (Complainants' Reply Brief at 27). The Complainants argue that BECo's own depreciation study from 1990 produced an accumulated reserve for depreciation for Account 364, pole investment, of $24,294,111, and that this earlier calculation supports the Complainants' calculation of accumulated depreciation for poles of $24,850,860 as a conservative estimate (id.). In addition, the Complainants argue that BECo's use of total distribution plant investment in the calculation of accumulated depreciation for poles understates the amount because distribution plant is commingled with

assets that have much lower depreciation rates than poles (id. at 28, citing Tr. 3, at 63-64).

ii. BECo

BECo argues that by using total electric plant investment rather than total distribution plant investment as a basis, the Complainants have overstated the accumulated depreciation for poles in their calculation because it cannot be assumed that distribution plant depreciates at the same rate as the entire electric plant (BECo Brief at 9, 10, citing Tr. 3, at 64; Exh. BE-5, at 27-28). Since poles are part of the distribution plant, BECo argues that it would be consistent to use total distribution plant investment in the calculation of accumulated depreciation for poles (BECo Brief at 9, 10). BECo calculates total accumulated depreciation for poles to be $19,264,839 (id. at 10-11, citing RR-DTE-8).

iii. Attorney General

The Attorney General argues that the Department should use total distribution plant investment when calculating accumulated depreciation[17] for poles since poles are a part of BECo's distribution plant (Attorney General Brief at 11-12, citing Exh. BE-5, at 27-29).

c. Analysis and Findings

The Department's goal is to accurately calculate pole costs while balancing the need to use publicly available data in its pole attachment rate. As it is easy to break out the total distribution plant amount from the total electric plant, we are able to determine the exact amount of accumulated depreciation for total distribution plant. Since poles are part of a

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[17] The Attorney General did not update the value for grounding (see footnote 16, above). As a result, the Attorney General's gross pole investment is slightly lower than BECo's value, which results in a slightly lower value for accumulated depreciation reserve for poles.

utility's distribution plant, using total distribution plant in the calculation of accumulated depreciation for poles is a more accurate reflection of pole costs. Total distribution plant data is also publicly available. Therefore, the Department will use total distribution plant in the calculation of accumulated depreciation for poles. Excluding tree trimming and grounding surcharges and using total distribution plant investment as the basis for the calculation results in $17,600,891 in accumulated depreciation for poles, as shown in Table 1 (attached at the end of this Order).

5. Accumulated Deferred Taxes

a. Introduction

All parties agree with the method for calculating accumulated deferred taxes for poles, however, the parties differ regarding the inputs for the calculation (RR-DTE-8; Exh. CABLE- 85; Attorney General Reply Brief at Att. A).

b. Positions of the Parties

i. Complainants

The Complainants only include FERC Account 282 (Accumulated Deferred Taxes - Other Property) in their determination of accumulated deferred taxes for total electric plant (Exh. CABLE-85). In addition, the Complainants use a lower gross pole investment value than BECo as a base, because they do not add additional amounts for initial tree trimming and grounding to gross pole investment (id.). Using these inputs, the Complainants calculate accumulated deferred taxes for poles to be $7,986,640 (id.).

ii. BECo

BECo includes FERC Account 281 (Accumulated Deferred Income Taxes - Accelerated Amortization Property) as well as Account 282 (Accumulated Deferred Income Taxes - Other Property) in its determination of the accumulated deferred taxes for total electric plant, which results in a value for accumulated deferred taxes for total electric plant that is higher than that used by the Complainants ($457,778,401 versus $448,698,866) (BECo Brief at 11 and n.14, citing Exh. AG-9). In addition, BECo uses a higher gross pole investment value since surcharges for initial tree trimming and grounding costs are included (see BECo Brief at 11). BECo calculates accumulated deferred taxes for poles to be $8,918,568 (id.).

iii. Attorney General

The Attorney General also includes FERC Accounts 281 and 282 in his calculation of accumulated deferred taxes for total electric plant (Attorney General Reply Brief at Att. A, citing Exh. BE-3, at 2). In addition, the Attorney General includes initial tree trimming and grounding in his gross pole investment calculation (Attorney General Reply Brief at Att. A). Based on these numbers, the Attorney General calculates accumulated deferred taxes for poles to be $8,892,760 (id.).[18]

c. Analysis and Findings

The Department finds that it is appropriate to include both FERC Accounts 281 and 282 when determining the accumulated deferred taxes for total electric plant as both these accounts reflect accumulated deferred taxes for utility property. In Sections IV(A)(1) and

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[18] The Attorney General did not update the value for grounding (see footnote 16, above). As a result, the Attorney General's gross pole investment is slightly lower than BECo's value, which results in a slightly lower value for accumulated deferred taxes for poles.

IV(A)(2) above, the Department found that a surcharge for initial tree trimming and grounding will not be included in the gross pole investment total. Applying these two findings to the calculation of accumulated deferred taxes for poles results in a value of $8,148,251, as shown in Table 1.

6. Net Pole Investment

Based on the findings contained in Sections IV(A)(2) - IV(A)(5) above, the Department finds that BECo's net investment in poles is $39,790,112, as shown in Table 1.

7. Net Investment in Appurtenances

The FCC formula reduces the total net pole investment by 15 percent to account for items that are not used or useful to the attaching companies, such as appurtenances. 2 FCC Rcd at 4390 (1987). The parties do not dispute this adjustment (RR-DTE-8; Exh. CABLE-85; Attorney General Reply Brief at Att. A, citing Exh. BE-3, at 1). The Department finds that reducing the total net pole investment by 15 percent to account for items that are not used or useful to the attaching companies, such as appurtenances, is reasonable. Subtracting 15 percent, or $5,968,517, from the net pole investment from above results in a net bare pole investment figure of $33,821,595, as shown in Table 1.

8. Calculation of Pole Equivalents

a. Introduction

Pole equivalents are the adjusted number of poles that BECo owns in full or in part. All parties calculate pole equivalents by adding the total number of BECo's SO poles to 50 percent of the number of BECo's JO poles (RR-DTE-8; Exh. CABLE-85; Attorney General

Reply Brief at Att. A, citing Exh. BE-3, at 1). The parties do, however, arrive at different figures for pole equivalents due to a dispute in determining the number of BECo's SO poles.

b. Positions of the Parties

i. Complainants

Based on their own review using BECo's Continuing Property Records, the Complainants argue that BECo has understated the number of SO poles in its service territory (Complainants' Brief at 26 n.11, citing Tr. 5, at 14). As a result of this alleged understatement by BECo, the Complainants have revised their pole equivalent calculation to reflect what they believe is the correct number of SO poles (Complainants' Brief at 26). The result is a calculation of 136,149 pole equivalents (Exh. CABLE-85).

ii. BECo

BECo argues that it has correctly accounted for its pole population and calculates 122,098 pole equivalents (BECo Reply Brief at 6, citing RR-DTE-8). BECo argues that the Complainants' adjustment to its pole population is incorrect, stating that the additional units that the Complainants include in their calculation of pole equivalents are not poles but rather items such as transformer platforms, switching platforms, bus supporting structures, mats, and fences (BECo Reply Brief at 5, citing Exhs. CABLE-85, BE-37, at 1-3). As they are not poles, BECo argues that these additional items should not be included in the calculation of pole equivalents (BECo Reply Brief at 5).

iii. Attorney General

The Attorney General has included 130,473 pole equivalents in his calculation (Attorney General Reply Brief at Att. A, citing Exh. BE-3, at 1).[19]

c. Analysis and Findings

The Department finds that BECo's calculation of pole equivalents is based on a credible count of its own SO poles. BECo's calculation of its number of SO poles is reported in business records prepared prior to the commencement of this proceeding. The Department has no reason to believe that these counts are incorrect or inflated for the purpose of this litigation. Therefore, the Department adopts BECo's calculation of the number of pole equivalents.

In order to determine the net investment per bare pole, the Department will use 122,098 as the number of total pole equivalents. Using this figure for total pole equivalents and the net investment in bare pole plant of $33,821,595 results in a net investment per bare pole of $277, as shown in Table 1.

B. Annual Carrying Charge Rate

1. Summary of Issues

In the second step of the formula, each of the parties calculates an annual carrying charge rate. The FCC formula calculates this rate by adding an administrative carrying charge rate, a depreciation carrying charge rate, a tax carrying charge rate, and a rate of return. Pole Attachments, FCC 97-94, CS Docket No. 97-98, at 36 (1997). The parties agree on the method used to calculate both the administrative carrying charge and the tax carrying charge,

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[19] The Attorney General bases his calculation of pole equivalents on an earlier value presented by BECo, but, this number of pole equivalents has been updated by BECo during the course of the proceedings (see RR-DTE-8).

although their results differ due to numerical differences in inputs. Similarly, both the Complainants and BECo agree on the method used to calculate the maintenance carrying charge; however, the Attorney General adds several additional cost categories to the maintenance expense. With respect to the depreciation carrying charge, the parties disagree as to the proper base for the annual depreciation rate. The parties agree that the Department approved rate of return from BECo's most recent rate case should be used. Based on the findings discussed below, the Department finds that the correct annual carrying charge rate is 36.00 percent, as shown in Table 1.

2. Administrative Carrying Charge

The administrative carrying charge is calculated by dividing administrative expense (FERC Form 1, Accounts 920-931) by net plant in service. 2 FCC Rcd at 4390 (1987). All parties use the same amount for administrative expense ($175,480,594) but have different figures for net plant in service (RR-DTE-8; Exh. CABLE-85; Attorney General Reply Brief at Att. B, citing Exh. BE-3, at 2). Net plant in service is equal to total plant in service minus depreciation reserve for total plant in service minus accumulated deferred taxes. As discussed in Section IV(A)(5), above, the parties differ in the amount of accumulative deferred taxes to use to calculate net plant investment.[20]

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20 BECo calculates an administrative carrying charge of 9.6 percent whereas the Complainants calculate a charge of 9.55 percent (see Exh. CABLE-85, RR-DTE-8), the difference being the amount used for accumulated deferred taxes, as discussed in Section IV(A)(5), above.

The Department has indicated in Section IV(A)(5), above, that the correct amount for accumulated deferred taxes is $457,778,401. Using this input, the Department finds that the correct administrative carrying charge in this case is 9.60 percent, as shown in Table 1.

3. Tax Carrying Charge

The tax carrying charge is calculated by dividing normalized tax expense (FERC Form 1, Account 408-411) by net plant in service. 2 FCC Rcd at 4390 (1987). Similar to the administrative carrying charge calculation described above, all parties agree on the correct amount to use for normalized tax expense but disagree in their calculation of net plant in service as a result of using different amounts for accumulated deferred taxes (RR-DTE-8; Exh. CABLE-85; Attorney General Reply Brief, Att. B, citing Exh. BE-3, at 2) (see Section IV(A)(4), above). As a result, BECo calculates the tax carrying charge to be 9.45 percent while the Complainants calculate it to be 9.40 percent. Following the reasoning discussed in Section IV(B)(2), above, the Department finds that the correct tax carrying charge applicable to this case is 9.45 percent, as shown in Table 1.

4. Maintenance Carrying Charge

a. Introduction

The maintenance carrying charge is calculated by dividing maintenance expense (FERC Form 1, Account 593) by net investment in poles. 2 FCC Rcd at 4390 (1987). The parties agree on the method of calculating this carrying charge but, as discussed in Sections IV(A)(2) - IV(A)(5), above, differ in the inputs to calculate net investment in poles. In addition, the Attorney General adds several additional cost categories to the maintenance expense, which are discussed below.

b. Positions of the Parties

i. Complainants

The Complainants use a pole maintenance expense of $6,907,749 (FERC Form 1, Account 593 (Maintenance and Overhead Lines)) and, an amount for net investment in poles of $173,191,261. The Complainants calculate a maintenance carrying charge of 3.99 percent by dividing the pole maintenance expense by the net investment in poles (Exh. CABLE-85, at 1).

ii. BECo

BECo uses a pole maintenance expense of $6,907,749 and an amount for net investment in poles of $210,731,803 which results in a maintenance carrying charge of 3.28 percent (RR-DTE- 8).

iii. Attorney General

The Attorney General uses a maintenance expense amount that is three times the amount used by BECo and the Complainants mainly because, unlike the other parties, he is including operation expenses which amount to $8,841,744 (Attorney General Reply Brief, Att. B). In addition, the Attorney General, unlike the other parties that use only FERC Form 1, Account 593, adds $2,313,441 to the maintenance expense to account for supervision, engineering, and miscellaneous expenses (Id.). The Attorney General uses $173,191,261 for net investment in poles which results in a maintenance carrying charge of

10.43 percent (id. citing Exh. BE-3 at 2).[21]

c. Analysis and Findings

The Department notes that the Attorney General advocates using additional cost categories not supported by direct testimony and never mentioned prior to the submission of his reply brief. In addition, his method for calculating pole maintenance expense is difficult to reconcile with the Department's intention to keep the pole attachment rate formula as easily replicated as possible based on publicly available information. The FCC method uses FERC Form 1, Account 593 for pole maintenance expense. Because this information is publicly available and has been adopted by the FCC, the Department finds that FERC Form 1, Account 593 shall be used for pole maintenance expense.

With respect to net investment in poles, the most significant difference between the Complainants and BECo is that when calculating net investment in poles the Complainants use total plant in service, whereas BECo uses total distribution plant. The Department finds that distribution plant will be used in this case because, as discussed in section IV(A)(4), total distribution plant is both publicly available and a more accurate reflection of the costs of poles. Using a pole maintenance expense of $6,907,749 and net investment in poles of $210,731,803 results in a maintenance carrying charge of 3.28 percent, as shown in Table 1.

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[21] The number for net investment in poles and the maintenance carrying charge would have been $210,731,803 and 8.57 percent respectively had the Attorney General used the numbers from BECo's revised exhibits (see RR-DTE-8).

5. Depreciation Carrying Charge

a. Introduction

The depreciation carrying charge is calculated by multiplying the ratio of gross investment in poles to net investment in poles by the annual depreciation rate for poles. The parties disagree with respect to two factors, gross investment in poles and net investment in poles, needed to calculated this carrying charge. Their respective positions have been explained in Section IV(A), above. The parties also disagree regarding the use of an annual depreciation rate that pertains to BECo's entire distribution plant, as opposed to an annual depreciation rate that pertains specifically to poles.

b. Positions of the Parties

i. Complainants

The Complainants use an annual depreciation rate for poles of 2.38 percent. However, since the Complainants use a different amount for gross investment in poles and net investment in poles as discussed in Sections IV(A)(2) - IV(A)(5), above, their depreciation carrying charge is calculated to be 4.77 percent (Exh. CABLE-85).

ii. BECo

According to BECo, the appropriate annual depreciation rate for poles should be 2.38 percent, pursuant to the 1992 settlement agreement in BECo's most recent rate case, D.P.U. 92-92 (BECo Reply Brief at 9, citing Exhs. BE-44, at 9, BE-31). BECo states that this case set the depreciation rate for poles at the same rate as that used for distribution plant (id.).

iii. Attorney General

The Attorney General asserts that the appropriate annual depreciation rate for poles is 5.68 percent because this number applies specifically to poles and is based on BECo's last rate case, which included a depreciation study (Attorney General Reply Brief at 1, citing Exh. AG-4). However, the Attorney General states that if the Department were to reject the proposed 5.68 percent rate, then the Department should use the 2.98 percent distribution plant composite depreciation rate approved by the Department in BECo's electric restructuring case, D.P.U. 96-23 (Attorney General Reply Brief at 2 n.1).

c. Analysis and Findings

The 2.38 percent depreciation rate is a part of the Settlement Agreement in D.P.U. 92-92. See Boston Edison Company, D.P.U. 92-92, at 9 (1992). The 5.68 percent "pole specific" depreciation rate arises from a 1992 depreciation study prepared for Boston Edison during the course of those proceedings (Exh. AG-4). In reference to the 2.98 percent depreciation amount proposed by the Attorney General, this value is based on BECo's Restructuring Settlement. The Department declines to use 2.98 percent since this value is taken from BECo's Restructuring Settlement, and thus it was not presented to the Department until 1997. All other values used in the determination of the pole attachment rate are based on year-end 1995 data.

As the 2.38 percent depreciation rate is a number readily available in both D.P.U. 92-92 and BECo's 1995 FERC Form 1, it conforms to our stated policy of facilitating resolution of future rate disputes by using publicly available data. Therefore, the Department agrees with BECo and the Complainants that the annual depreciation rate for

poles is 2.38 percent, which results in a depreciation carrying charge of 3.92 percent, as shown in Table 1.

6. Rate of Return

All parties agree that the appropriate rate of return is the rate used in BECo's last rate case, D.P.U. 92-92 (RR-DTE-8; Exh. CABLE-85, at 2; Attorney General Reply Brief at Att. B). That case, which was settled, used a rate of return of 9.75 percent.[22]

7. Total Carrying Charge

Based on the findings made in sections IV(B)(2) - IV(B)(6) above, the Department finds that the total carrying charge rate is 36.00 percent, as shown in Table 1.

C. Cost Allocation

1. Summary of Issues

The third component of calculating a fully allocated rate involves calculating an "allocation factor" or a "usage factor" to allocate the costs among the utility and others using the pole to attach their lines. According to the FCC formula, the usage factor is equal to the assumed CATV attachment space divided by the usable space on a pole. 2 FCC Rcd at 4390 (1987). The parties present differing arguments for assumed attachment space as well as usable space on a pole.

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22 In D.P.U. 92-92, the Department approved a settlement which, among other things, set a maximum rate of return on common equity of 11.75 percent. Boston Edison Company, D.P.U. 92-92, at 10 (1992). This return, when applied to a representative capital structure consisting of 50 percent debt at an imputed cost of 8.50 percent, 10 percent preferred stock at an imputed cost of 8.0 percent, and 40 percent common equity at the rate of 11.75 percent, produces as overall rate of return of 9.75 percent. Id.

Usable space with respect to poles is defined as "the total space which would be available for attachments, without regard to attachments previously made: (i) upon a pole above the lowest permissible point of attachment of a wire or cable upon such pole which will result in compliance with any applicable law, regulation, or electrical safety code..." G.L. c. 166, § 25A. The FCC formula assumes one foot per attachment for CATV attachment space and a rebuttable presumption of 13.5 feet[23] for usable space. 2 FCC Rcd at 4390 (1987).

2. Positions of the Parties

a. Complainants

The Complainants argue that the Department should adopt the FCC's presumptions of 1/13.5 feet (Complainants' Brief at 32). According to the Complainants, one may rebut the presumptions of 1/13.5 feet with a survey of outside pole plant that is limited to poles with cable attachments (Complainants' Brief at 31, citing Exhs. CABLE-1, at 38, CABLE-41, at 17-18). Because BECo did not conduct a survey limited to poles with cable attachments, the Complainants argue that the FCC presumptions of 1/13.5 feet should be used (Complainants' Brief at 31, 35).

The Complainants assert that the National Electric Safety Code's ("NESC") typical clearance for communication conductors is 15.5 feet and may be reduced to as little as 9.5 feet

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[23] The 13.5 feet is the average usable space between a 35 foot pole and a 40 foot pole, which have 11 feet and 16 feet of usable space, respectively, assuming a minimum attachment height of 18 feet and a burial depth of 10 percent of the pole plus two feet (Exh. CABLE-1, at 35).

(Complainants' Brief at 34, citing Exh. CABLE-1 at 35). The Complainants state that their witness developed a minimum attachment height of 18 feet as a workable composite of the NESC's variations in minimum vertical clearance (Complainants' Brief at 34). Also, the Complainants note that the specific grants of pole locations specify 18 feet along highways and 16 feet along residential roads (id. citing Exhs. CABLE-38, CABLE-41, at 16, Tr. 2, at 144-145).

b. BECo

According to BECo, the FCC's rebuttable presumption of 13.5 feet is no longer a valid representation of usable space because of changes in average utility pole heights as well as changes in minimum attachment heights (BECo Brief at 18, citing Exh. BE-5, at 24). Instead, BECo proposes that usable space be calculated by first determining the average pole height for all its poles, which equates to 37.1 feet (Exh. BE-5, at 32). BECo argues that usable space should be calculated using all of its poles, not just a subset, because this method avoids the costly and difficult process of conducting a survey to determine which poles bear attachments (id. at 20).

BECo deducts the amount of pole that is below the minimum attachment height and the amount of pole that is underground (id.). Instead of using the FCC presumptions, BECo relied on its own engineering specifications and working diagrams that show a minimum attachment height of 20 feet (BECo Brief at 19, citing Exh. BE 5, at 31). BECo states that the town of Somerville requires a minimum vertical clearance of 20 feet for all wires and, therefore, 20 feet is an accepted practice (BECo Reply Brief at 19, citing Exh. BE-1). Lastly, BECo claims that

the NESC requires a minimum vertical clearance of 18 feet (BECo Brief at 19). Therefore, the minimum attachment height would need to be above 18 feet to account for the wire sag (id.). Like the FCC formula, BECo uses a burial depth of 10 percent of the pole plus two feet. Using this method BECo calculates the amount of usable space to be 11.39 feet (BECo Brief at 20-21).

BECo adopts the FCC formula's one foot of pole space for cable attachments (Exh. BE-5, at 32). However, as an alternative, BECo proposes that cable attachment pole space should be allocated based on capacity because, according to BECo, assuming one foot of pole space for cable attachments suggests that eleven attachments can be attached to each of its poles, which cannot occur because it would over stress the poles (id. at 33). Absent an engineering study, BECo proposes that 15 percent of usable space (approximately seven attachments) should be allocated to the cable attachment (id. at 34).

c. Attorney General

The Attorney General maintains that the cost of providing pole attachment service should be fully allocated to those users of the service. Therefore, costs should be divided by the existing number of attachments (Attorney General Brief at 16).

3. Analysis and Findings

With respect to the minimum attachment height used to determine usable space, G.L. c. 166, § 25A states that the minimum attachment height is the lowest permissible point of attachment of a wire or cable upon such pole which will result in compliance with any applicable law, regulation, or electrical safety code. Rule 232 of the NESC states that the minimum vertical clearance for communication conductors is 15.5 feet along roads and other

areas subject to truck traffic and may be reduced to as little as 9.5 feet along spaces and ways subject to pedestrian traffic only. Therefore, the NESC allows for attachments at 18 feet above the ground, allowing at least 2.5 feet for wire sag. Arguably, the only "law or regulation preventing" BECo from attaching conductors below 20 feet is an ordinance in Somerville that requires a minimum vertical clearance of 20 feet for all wires and conductors. Thus, outside of the town ordinance in Somerville, there is no record evidence of any safety code, regulation, or law preventing BECo from allowing attachments below 20 feet. Therefore, BECo has failed to demonstrate that the minimum attachment height used to calculate usable space should be 20 feet throughout its service territory. Instead, the Department finds that the minimum attachment height, for the purposes of establishing this allocation or usage factor, shall be 18 feet because this meets the minimum vertical clearance requirements of the NESC and is consistent with the FCC formula.

With respect to BECo using all its poles to determine the average height of poles with cable attachments, approximately 10 percent of BECo's poles are 30 feet or shorter, a height too short to bear any attachments (Tr. 3, at 59). The Department finds that BECo's method does not accurately calculate the average height of poles with cable attachments because it uses poles that do not contain attachments. We find that BECo has not demonstrated that its method is an accurate measure of usable space. We also find that BECo has not presented sufficiently persuasive evidence to warrant our not adopting the FCC presumption of 13.5 feet as the best alternative in order to maintain a formula that is simple and expeditious. This presumption may be rebutted if a company provides credible evidence, in the form of a

statistical analysis or projections using actual pole surveys, that its average usable space is materially different from 13.5 feet.

Applying the federal presumption of 13.5 feet of usable space, the Department finds that BECo has not rebutted the presumption using actual pole data. BECo has not done an actual pole survey, arguing that this process is too difficult and costly (BECo Brief at 20). Rather than conducting a survey, BECo attempts to rely on its own "engineering specifications" and "working diagrams" to show that its actual minimum attaching height is greater than 18 feet. (id. at 19). We find that BECo's evidence is not sufficient in nature or degree to rebut the 13.5 foot presumption.

With respect to BECo's alternative proposal to allocate space for cable attachments based on capacity, the Department finds that this method is not an appropriate representative number without BECo conducting a survey of the loading limitations of its poles. Instead of conducting a survey, BECo "estimated" that its poles could hold a maximum of seven attachments. However, there is no other evidence on the record that corroborates the reasonableness of this estimated number. The Complainants, the Attorney General in his proposed calculation of the cable attachment rate, and BECo's initial proposal, all use the FCC's rebuttable presumption of one foot of pole space for cable attachments. Given that this presumption is proposed by all the parties and is easily replicated, the Department will use the FCC rebuttable presumption of one foot of pole space for cable attachments.

D. End Result

Multiplying the allocation factor found in Section IV(C), by the carrying charge rate found in Section IV(B), by the net investment per bare pole found in Section IV(A), the

Department finds that the maximum lawful pole attachment rate BECo may charge the Complainants is $7.39 for SO poles and $3.70 for JO poles, as shown in Table 1.

E. Interests of BECo Ratepayers and CATV Subscribers

In resolving complaints from attachers, the Department is required to balance both the interests of utility ratepayers and CATV subscribers. G.L. c.166, § 25A. The Department finds the rate, as shown in Table 1, is reasonable and will not impose a financial disruption on the subscribers of CATV services or BECo ratepayers.

The Department finds the $7.39 rate reduces BECo's intrastate revenues by approximately $150,000.[24] Dividing this number by BECo's 1995 total electric operating revenues of $1,620,634,111[25] results in an approximate impact on BECo's revenues of .009 percent. The Department finds that this impact on BECo ratepayers will be minimal and will not require an adjustment to other rates.[26]

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[24] This figure is the result of taking the total of CATV attachments on JO poles (161,755) and multiplying by the difference between BECo's current JO rate ($4.56) and the Department JO rate ($3.70) equaling $139,127 and taking total of CATV attachments on SO poles (11,470) and multiplying by the difference between BECo's current SO rate ($8.00) and the Department SO rate ($7.39) equaling $6,997. The sum of these two values is $146,124 which represents impact of approximately $150,000 on BECo's intrastate revenues (see Exh. AG-8).

[25] See BECo 1995 FERC Form 1, at 300 (Exh. AG-9).

[26] In Greater Media, the Department found that New England Telephone (d/b/a Bell Atlantic-Massachusetts) received only 0.16 percent of its intrastate revenues from conduit attachments. The Department found that the impact on telephone ratepayers would be minimal and would not require an adjustment to other rates. Greater Media at 41.

With respect to CATV subscribers, since the attachment rate will be decreasing, the Department finds that the new rate will have no adverse effect on CATV subscribers. If anything, the Department's rate should have a beneficial impact on CATV subscribers.

V. TERMS AND CONDITIONS OF AERIAL LICENSE AGREEMENTS

A. Summary of Issues

Pursuant to 220 C.M.R. § 45.07, if the Department determines that a rate, term, or condition is not reasonable, it may prescribe a reasonable rate, term, or condition and may: (1) terminate the unreasonable rate, term or condition, and (2) substitute in the attachment agreement the reasonable rate, term or condition established by the Department. Several of the Complainants' requests for relief relate only to non-rate terms and conditions of the pole attachment aerial licensing agreements. These requests for relief concern two general categories: (1) the terms and conditions surrounding the performance and payment for "makeready" work; and (2) the alleged preferential terms and conditions which BECo affords its affiliate BECoCom/RCN, as compared to those offered the Complainants, and resultant allegations of unsafe construction practices by BECo and/or BECoCom.

B. Positions of the Parties

1. Complainants

The Complainants argue that the Department must remedy in the present proceeding the "discriminatory and unsafe" situation caused by BECo exempting its affiliates from the standard three party license that all unaffiliated attachers must sign (Complainants' Brief at 104; Complainants' Reply Brief at 30-42, 56-61). As a remedy, the Complainants' request that the Department order BECo to deal with its affiliates under the standard aerial

license agreement that unaffiliated CATV operators and others must sign (Complainants' Brief at 95, citing Exh. CABLE-1, at 64, Tr.1, at 88-189).

Specifically, the Complainants allege with respect to "makeready" that the standard aerial license agreement provides no timetables for the processing of applications of "makeready", and that, therefore, the time from processing of an application to completion of "makeready" can be from 60 days to nine months (Complainants' Brief at 87, citing Tr.1, at 148-149, 156; Exh. BE-2). The Complainants compare this processing time to BECo's agreement with BECoCom/RCN which they argue has a "time-is-of-the-essence" clause (Complainants' Brief at 87-88, citing Tr. 2, at 42-43). In addition, the Complainants argue that the requirement that they pay "makeready" costs up front is unreasonable in light of the fact that BECo's affiliates are not required to pay for "makeready" costs until after the construction is completed (Complainants' Brief at 95).

The Complainants also allege that BECo has ceased to comply with NESC safety standards with respect to the BECoCom/RCN venture by allowing the installation of communications cable for its affiliate in the "safety zone" between power supply lines and communications lines, including "zig-zag" construction of communications wires in and out of the power space, arguing that it is motivated by the desire to afford its affiliate "quick and inexpensive" access to poles (see id. at 80-87).

Finally, the Complainants argue for several additional remedies they claim are necessary keep level the competitive playing field between the CATV companies and BECo's affiliates including: removal of BECoCom as controller of pole attachments; removal of employees from serving both BECo and BECoCom; issuance of an order

protecting the current practice of overlashing[27] by CATV companies; and instituting reporting requirements to ensure that BECo compliance with the above remedies (id. at 96).

2. BECo

BECo argues that only two of the allegations raised by the Complainants (the requirement that "makeready" costs be paid in advance and the timeliness of the performance of "makeready" work) fall into the category of "terms and conditions" within the meaning of G.L. c. 166, § 25A, and therefore remain within the scope of this proceeding (BECo Brief at 28). On the issue of advance payment for "makeready" work, BECo argues that the Complainants offered no evidence that the up-front requirement of "makeready" payments is unfair or unreasonable (id. at 29). On at least one occasion where the Complainants requested a change in the requirements for timing of such payments, BECo argues that the request was accommodated (id. citing Exh. BE-7, at 2-3). On the issue of the timeliness of performance of "makeready" work, BECo argues that there is no discussion in the aerial licensing agreements concerning time for performance, and further argue that the Complainants present no evidence that BECo either practically and/or intentionally delays the performance of "makeready" work (BECo Brief at 30-31, citing Exh. BE-2; Tr. 1, at 148-149).

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[27] Overlashing occurs when a service provider physically ties its wiring to another wiring already secured to a pole and is used routinely to accommodate additional strands of coaxial cable on existing pole attachments (Complainants' Brief at 102, citing Exh. CABLE-1, at 55).

With respect to the alleged preferential or different terms and conditions offered by BECo to its affiliates when compared to the terms and conditions offered to the Complainants, BECo first argues that because they do not deal directly with the terms and conditions of BECo's licensing agreements with the Complainants, these allegations are beyond the stated scope of this proceeding (BECo Brief at 32). BECo goes on to argue that, based on the record in this proceeding, each of the allegations made by the Complainants is without substance (id. at 32-48; BECo Reply Brief at 28-44).

3. Attorney General

The Attorney General submits that the Department has a duty to ensure that the terms and conditions associated with pole attachment agreements between BECo and the Complainants are reasonable (Attorney General Brief at 18, citing G.L. c. 166 § 25A). The Attorney General also argues that there is evidence in the record that BECo has afforded its affiliate, BECoCom/RCN "preferential" terms and conditions that are different from those afforded to the Complainants (Attorney General Brief at 18). To remedy this, the Attorney General argues that the Department should open another docket to determine the extent of this preferential treatment and determine the value associated with such treatment (id.).

C. Analysis and Findings

As stated earlier, the Department has issued an Order limiting the scope of the proceeding to whether the pole attachment rates, terms and conditions that BECo currently charges the Complainants are just and reasonable pursuant to G.L. c. 166, § 25A. See Scope Order at 8. Attempting to bring the terms and conditions of BECo's license

agreements with RCN/BECoCom within the scope of this proceeding, the Complainants allege that BECo has given preferential rights to its affiliates which are "so superior" that they have compromised the terms and conditions of the present CATV attachment agreements in this case. While it is clear that the terms and conditions of the Complainants' license agreements are different from those of BECo's affiliate, we are not convinced that they have compromised the terms and conditions of the present CATV attachment agreements in this case. These license agreements are the product of negotiations and the Complainants cannot point to any instances where they requested certain terms and conditions from BECo and were denied. It appears that the Complainants do not want the terms and conditions that BECo offers to its affiliate; rather they do not want the affiliate to have those terms and conditions (Tr. 1, at 215).

The majority of issues raised by the Complainants are outside of the scope of this proceeding.[28] Of the many issues raised by the Complainants, only those dealing with specific "makeready" terms and conditions (the requirement that "makeready" costs be paid in advance and the timeliness of the performance of "makeready" work) are within the scope of this proceeding and will be dealt with directly here. With respect to both of these

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[28] As we discuss in our Scope Order the Department has opened, on our own motion, an investigation of BECo's compliance with the Department's Order in Boston Edison Company, D.P.U. 93-37 (1993), Boston Edison Compliance with D.P.U. 93-37, D.P.U. 97-95 (1997), where any issues of improper cross-subsidization of BECo's affiliate will be reviewed. In addition, the Department has initiated a rulemaking to amend our existing Standards of Conduct, 220 C.M.R. §§ 12.00 et seq., in order to address a distribution company's informational and financial transactions with its non energy-related affiliate. Standards Of Conduct Rulemaking, D.P.U. 97-96 (1997). Deferring these issues to other dockets is a proper and necessary exercise of the Department's discretion.

"makeready" provisions, the Department finds that there is insufficient evidence in the record to show that these terms and conditions are unreasonable.

Prior to this proceeding, the Complainants had not requested that BECo change its policies regarding the upfront payment of "makeready" work; rather, the record demonstrates that in the only known instance where the timing of payments was at issue, BECo accommodated the request to modify the "makeready" payment schedule (see Exh. BE-7, at 2-3). On the issue of the timeliness of performance of makeready work, the Complainants present no credible evidence that BECo either practically and/or intentionally delays the performance of "makeready" work. Again the Complainants can point to no specific instances where the processing of requests for "makeready" work was delayed; rather, they rely on general statements that this process from application to completion can take anywhere from 60 days to nine months (Exh. BE-2; Tr.1, at 148-149, 156). We note that, in the event that the Complainants allege any specific instances of intentional delays on the part of BECo, they are free to bring a complaint before the Department. The timely processing of requests for pole attachments is critical to the Complainants' business and the Department instructs BECo to use its best efforts in processing these requests.

VI. EFFECTIVE DATE OF RELIEF

In Greater Media, in order to encourage the timely filing of complaints, we held that the new conduit rate would be effective on the date the complaint was filed, but refused to grant refunds prior to that date. Greater Media at 30. The pole attachment statute does not require any retroactive relief, however "it does confer broad authority on the department to determine reasonable rates and provide remedies to enforce them." See Greater Media Inc. v.

Department of Public Utilities, 415 Mass. 409 at 419 (1993). On appeal, the Supreme Judicial Court held that "the method that the department chose to determine and enforce its rates is consistent with this general grant of authority." Id.

In the present case the parties have agreed that the relief, if any, to which Complainants are found entitled will relate back to August 1, 1997, the date of the filing of the original Complaint (see Tr. Procedural at 5-11 (October 8, 1997)). The Department will allow any new rate established in this Order to be effective as to the Complainants as of the date the original Complaint was filed. There is no evidence in the record to support the granting of refunds prior to that date.

VII. ORDER

Accordingly, after due notice, hearing and consideration, it is hereby

ORDERED: That Boston Edison Company shall modify its license agreements with Cablevision of Boston Company, Cablevision of Brookline Limited Partnership, Cablevision of Framingham, Inc., A-R Services, Inc., MediaOne of Massachusetts, Inc., MediaOne of Milton, Inc., MediaOne of Needham, Inc. and Time Warner Cable to incorporate a rate of $7.39 per attachment for solely-owned poles, and a rate of $3.70 per attachment for jointly-owned poles, and that said rates shall be effective as of August 1, 1997; and it is

FURTHER ORDERED: That Boston Edison Company shall comply with all other directives contained herein.

By Order of the Department,

Janet Gail Besser, Chair

James Connelly, Commissioner

W. Robert Keating, Commissioner

Paul B. Vasington, Commissioner

A true copy
Attest:
MARY L. COTTRELL
Secretary

TABLE 1
CALCULATION OF POLE ATTACHMENT RATE

			Source
	Net Investment Per Pole		
A	Total Gross Investment in Pole Plant	$65,539,254	FERC Form 1 Account 364
B	Accumulated Depreciation (Poles)	$17,600,891	(B) = (KK) * (LL)
C	Accumulated Deferred Taxes (Poles)	$8,148,251	(C) = (MM) * (LL)
D	Net Investment in Pole Plant	$39,790,112	(D) = (A) - (B) - (C)
E	Net Investment in Appurtenance	$5,968,517	(E) = (D) * (.15)
F	Net Investment in Bare Pole Plant	$33,821,595	(F) = (D) - (E)
G	Number of Pole Equivalents	122,098	RR-DTE-6
H	**Net Investment Per Bare Pole**	**$277**	(H) = (F) / (G)
	Carrying Charges		
	Administrative		
I	Administrative Expense	$175,480,594	FERC Form 1 Accounts 920 - 935
J	Total Plant in Service	$3,682,072,895	FERC Form 1, at 200
K	Depreciation Reserve for Total Plant in Service	$1,396,160,757	FERC Form 1, at 200
L	Accumulated Deferred Taxes	$457,778,401	FERC Form 1 Accounts 281 - 282
M	Net Plant in Service	$1,828,143,737	(M) = (J) - (K) - (L)
N	Administrative Carrying Charge	9.60%	(N) = (I) / (M)
	Tax		
O	Normalized Tax Expense	$172,748,172	FERC Form 1 Accounts 408 - 411
P	Total Plant in Service	$3,682,072,895	(P) = (J)
Q	Depreciation Reserve for Total Plant in Service	$1,396,160,757	(Q) = (K)
R	Accumulated Deferred Taxes	$457,778,401	(R) = (L)
S	Net Plant in Service	$1,828,143,737	(S) = (P) - (Q) - (R)
T	Tax Carrying Charge	9.45%	(T) = (O) / (S)
	Maintenance		
U	Maintenance Expense	$6,907,749	FERC Form 1 Account 593
V	Net Investment in Poles	$210,731,803	(V) = (FERC Accounts 364, 365, 369) - (KK) - (MM)
W	Maintenance Carrying Charge	3.28%	(W) = (U) / (V)
	Depreciation		
X	Annual Depreciation for Poles	2.38%	FERC Form 1, at 337
Y	Gross Investment in Pole Plant	$65,539,254	(Y) = (A)
Z	Net Investment in Pole Plant	$39,790,112	(Z) = (D)
AA	Gross/Net Adjustment	164.71%	(AA) = (Y) / (Z)
BB	Depreciation Carrying Charge	3.92%	(BB) = (X) * (AA)
	Return		
CC	Rate of Return	9.75%	BECo's Last rate case, D.P.U. 92-92
	Allocation of Usable Space		
DD	Assumed Cable Attachment Space	1	FCC Rebuttable presumption
EE	Usable Space	13.5	FCC Rebuttable presumption
FF	**Usage Factor**	**7.41%**	(FF) = (DD) / (EE)
	Pole Attachment Rate		
GG	Net Investment Per Bare Pole	$277	(GG) = (H)
HH	**Total Carrying Charge**	**36.00%**	(HH) = (N)+(T)+(W)+(BB)+(CC)
II	Usage Factor	7.41%	(II) = (FF)
JJ	**Calculated Rate**	**$7.39**	(JJ) = (GG)*(HH)*(II)

KK $\dfrac{\Sigma \text{ FERC Accounts 364, 365, 369 * Accumulated Depreciation for Distribution}}{\text{Total Distribution Plant}} = \dfrac{\$347,101,443 * \$404,052,095}{\$1,504,641,591}$

LL $\dfrac{364}{\Sigma \text{ FERC Accounts 364, 365, 369}} = \dfrac{\$65,539,254}{\$347,101,443}$

MM $\dfrac{\Sigma \text{ FERC Accounts 364, 365, 369 * Accumulated Deferred Taxes}}{\text{Total Electric Plant}} = \dfrac{\$347,101,443 * 457,778,401}{\$3,682,072,895}$

Appeal as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part. Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission, or within such further time as the Commission may allow upon request filed prior to the expiration of twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. (Sec. 5, Chapter 25, G.L. Ter. Ed., as most recently amended by Chapter 485 of the Acts of 1971).

November 6, 1998

D.T.E. 98-52

A Complaint and Request for Hearing of A-R Cable Services, Inc., A-R Cable Partners, Cablevision of Framingham, Inc., Charter Communications, Greater Worcester Cablevision, Inc., MediaOne of Massachusetts, Inc., MediaOne of Pioneer Valley, Inc., MediaOne of Southern New England, Inc., MediaOne of Western New England, Inc., MediaOne Enterprises, Inc., MediaOne of New England, Inc., Pegasus Communications and Time Warner Cable pursuant to G.L. Chapter 166, § 25A and 220 C.M.R. § 45.04 of the Department's Procedural Rules seeking relief from alleged unlawful and unreasonable pole attachment fees imposed on Complainants by Massachusetts Electric Company.

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FOR: A-R CABLE SERVICES, INC.
A-R CABLE PARTNERS
CABLEVISION OF FRAMINGHAM, INC.
CHARTER COMMUNICATIONS
GREATER WORCESTER CABLEVISION, INC.
MEDIAONE OF MASSACHUSETTS, INC.
MEDIAONE OF PIONEER VALLEY, INC.
MEDIAONE OF SOUTHERN NEW ENGLAND, INC.
MEDIAONE OF WESTERN NEW ENGLAND, INC.

MEDIAONE ENTERPRISES, INC.
MEDIAONE OF NEW ENGLAND, INC.
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Limited Participant

TABLE OF CONTENTS

I. INTRODUCTION

On May 20, 1998, pursuant to G.L. c. 166, § 25A, and 220 C.M.R. §§ 45.00 et seq., A-R Cable Services, Inc., A-R Cable Partners, Cablevision of Framingham, Inc., Charter Communications, Greater Worcester Cablevision, Inc., MediaOne of Massachusetts, Inc., MediaOne of Pioneer Valley, Inc., MediaOne of Southern New England, Inc., MediaOne of Western New England, Inc., MediaOne Enterprises, Inc., MediaOne of New England, Inc., Pegasus Communications and Time Warner Cable (collectively, "Complainants") filed a Complaint and Request for a Hearing[1] with the Department of Telecommunications and Energy ("Department") against Massachusetts Electric Company ("MECo") seeking relief from MECo's cable television ("CATV") pole attachment rates. This matter was docketed as D.T.E. 98-52. Boston Edison Company was granted limited participant status in the proceeding. See Hearing Officer Ruling on Petition of Boston Edison Company for Leave to Participate as a Limited Participant, D.T.E. 98-52 (July 21, 1998).

The Complainants, fifteen CATV companies serving customers in several communities located in the MECo service territory, enter into license agreements for the use of CATV attachments on MECo-owned poles[2] (Exhs. Cable-3, at 2-3, 5, ex. 2-7; MECo-16, at 5, att. 2-3). On November 20, 1997, MECo notified the Complainants of an approximate 68 percent increase in its annual solely-owned ("SO") pole attachment rate to $15.81 and in its

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[1] The request for a hearing was made pursuant to 220 C.M.R. § 45.04(2)(g), which provides that the Complainants must request a hearing pursuant to 220 C.M.R. § 1.06, or waive the right to such a hearing.

[2] While certain of the poles in question are solely-owned by MECo, other poles are jointly-owned by MECo and New England Telephone and Telegraph Company d/b/a Bell Atlantic (Exhs. Cable-3, at 2; MECo-16, at 2).

annual jointly-owned ("JO") pole attachment rate to $7.91, effective February 1, 1998. That notification led to the present proceeding (Exhs. Cable-3, at 7; MECo-16, at 2; Cable-1, at 9-10).

MECo's proposed rates would replace those that were negotiated with the Complainants in 1994[3] (Exh. MECo-16, at 3). Specifically, the Complainants request that the Department grant the following relief: (1) order MECo to terminate its pole attachment rate pursuant to 220 C.M.R. § 45.07(1); (2) set an annual pole attachment rate effective February 1, 1998,[4] not exceeding the amounts of $8.98 per SO pole and $4.49 per JO pole pursuant to 220 C.M.R. § 45.07(2); (3) order MECo to refund, effective as of February 1, 1998, all amounts paid in excess of the maximum annual pole attachment rates that are established as a result of this proceeding; and (4) order MECo to refrain from acting, or refusing to act, in a manner that in any way prejudices Complainants' rights under their pole attachment agreements (Exh. Cable-3, at 12-13). On May 29, 1998, MECo filed a response to the complaint in which it denied that its current or proposed pole attachment rates are unlawful or unreasonable and asked that Complainants' requests for relief be denied (Exh. MECo-16, at 4-7).

In 1978, the Massachusetts Legislature enacted the "Pole Attachment Statute," St. 1978, c. 292, § 1, inserting G.L. c. 166, § 25A. This statute gives the Department the

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[3] A two-step rate increase was negotiated in 1994. That increase resulted in the current rates of $9.40 per SO pole and $4.70 per JO pole (Exh. MECo-16, at 3).

[4] Complainants and MECo have agreed that the pole attachment rates determined as a result of this proceeding will be effective as of February 1, 1998 (see Exhs. Cable-3, at Exh. 15; MECo-16, at Att. 1; Cable-1, at 10).

authority "to regulate the rates, terms and conditions applicable to attachments," as well as to "determine and enforce reasonable rates, terms and conditions of use of poles . . . ." As a result of a rulemaking proceeding, CATV Rulemaking, D.P.U. 930 (1984), the Department adopted the pole attachment dispute regulations now codified as 220 C.M.R. §§ 45.00 et seq. However, in CATV Rulemaking, supra, the Department declined to determine a specific method of calculation for pole attachment rates, instead leaving the method(s) to be determined by adjudication. Id. at 14-15. The method for determining pole attachment rates was set by the Department in a proceeding that considered the aerial pole attachment rates of Boston Edison Company. See Cablevision of Boston Inc., et als., D.P.U./D.T.E. 97-82 (1998) ("Cablevision"). This matter is the second aerial pole attachment complaint received pursuant to the pole attachment regulations and the first instance in which the Department has been asked to review MECo's pole attachment rates.[5]

Pursuant to notice duly issued, a public hearing was held at the Department's offices on June 23, 1998, to afford interested persons an opportunity to comment. Two days of evidentiary hearings were held at the Department's offices on August 10 and 12, 1998. In support of their complaint, the Complainants presented the testimony of one witness: Paul Glist, an attorney whose practice concentrates on pole attachment issues. MECo presented the testimony of three witnesses: (1) G. Paul Anundson, the overhead line coordinator for New

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[5] In Greater Media, Inc., D.P.U. 91-218 (1992), the Department approved a method for calculating rates for CATV attachments within underground conduit.

England Power Service Company ("NEPSCO")[6]; (2) Allen L. Clapp, an economist and licensed professional engineer; and (3) David M. Webster, a principal financial analyst in the rate department of NEPSCO. The evidentiary record consists of 16 exhibits sponsored by the Complainants, 21 exhibits sponsored by MECo, and 39 exhibits sponsored by the Department. The Complainants and MECo filed briefs and reply briefs.

II. PARTIAL SETTLEMENT

Complainants MediaOne of Massachusetts, Inc., MediaOne of Pioneer Valley Inc., MediaOne of Southern New England Inc., MediaOne of Western New England, Inc., MediaOne Enterprises, Inc., and MediaOne of New England, Inc. (collectively "MediaOne") executed a pole attachment license agreement with MECo on February 20, 1998 (Exh. Cable-3, at Exh. 4). Despite this executed license agreement, MediaOne alleges that an agreement was not reached on the new pole attachment rates because of unfair dealing on MECo's part. MediaOne stated that they believed that the negotiations for this new agreement only involved certain changes to MECo's overlashing provisions and the consolidation of three MECo-MediaOne licenses into one single agreement, and that the attachment rates would remain the same. When the new licence agreement was signed, however, MediaOne alleges that without its knowledge or consent, the agreement contained MECo's new higher pole attachment rate (Exh. Cable-3, at 8).

Complainant Greater Worcester Cablevision, Inc. ("Greater Worcester"), executed a pole attachment license agreement with MECo on March 17, 1998 (id. at Exh. 5). Greater

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6 NEPSCO provides engineering and technical services for the subsidiary companies of New England Electric System, including MECo (Exh. MECo-16, at 93, 99).

Worcester alleges it signed this pole attachment license agreement "under duress," claiming that MECo refused to process certain new pole attachments in the absence of such agreement (id.).

Both MediaOne and Greater Worcester request that the Department terminate these pole attachment license agreements as unlawful (id. at 12). In its response, MECo denies that it refused to process any new license agreements on behalf of Greater Worcester and argues that these agreements should not be overturned as they were "spontaneously and voluntarily" executed by the Complainants (Exh. MECo-16, at 2, 5, 8).

On August 14, 1998, the parties filed an "Offer of Partial Settlement" ("Offer") agreeing to the following: (1) to "withdraw with prejudice" any allegations of duress and unfair dealing by MECo in the execution of MECo's current aerial license agreements with MediaOne and Greater Worcester; and (2) that, upon Department issuance of the final Order in this proceeding, MECo will charge, and Greater Worcester and MediaOne will pay, the pole attachment rates determined by the Department (Offer at ¶¶ 1, 2). By its terms, this Offer is subject to the approval of the Department without substantial change of its terms and conditions (id. at ¶ 3).

The Department hereby approves the parties' Offer of Partial Settlement. Acceptance by the Department of this partial settlement does not constitute a determination as to the merits of any allegations or contentions made in the proceeding.[7] In addition, the Department's

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[7] The Department has the authority to alter unreasonable or unjust pole attachment contractual rates, terms or conditions. Greater Media, Inc., D.P.U. 91-218, at 30-31 (1992). We caution, however, that faced with clear evidence of a negotiated pole attachment agreement signed since the issuance of the Department's final Order in

(continued...)

acceptance of this partial settlement has no precedential value with regard to future filings. See Western Massachusetts Electric Company, D.P.U. 92-13, at 7 (1992); Barnstable Water Company, D.P.U. 93-233-A at 4 (1994).

III. RATE METHOD

A. Jurisdiction and State Regulatory Background

Massachusetts possesses and exercises the authority to regulate pole attachment rates, terms and conditions at the state level. G.L. c. 166, § 25A; 220 C.M.R. §§ 45.00 et seq.; States That Have Certified That They Regulate Pole Attachments, Public Notice, 7 F.C.C. Rcd. 1498 (1992). The Massachusetts pole attachment statute provides the Department with authority to regulate the rates, terms, and conditions applicable to attachments and requires that the Department consider the interests of subscribers of CATV services as well as the interests of consumers of utility services. G.L. c. 166, § 25A. In determining a just and reasonable rate, the statute requires that the rate recover "the additional costs of making provisions for attachments" (i.e., marginal or incremental cost) and no more than "the proportional capital and operating expenses of the utility attributable to that portion of the pole...occupied by the attachment" (i.e., fully allocated cost). Id. Further, "[such]

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[7] (...continued)
Cablevision, all parties seeking relief should be prepared to present compelling reasons that would cause the Department to invalidate such contracts. The Department's authority under G.L. c. 166, § 25A is statutory and, unlike a court sitting in equity, not inherent. Just as courts are reluctant to use their equitable powers to reform or invalidate contracts freely entered into, so too is the Department disposed to be sparing in the exercise of its § 25A statutory power to intrude on commercial arrangements between large corporations – absent, of course, some compelling reason. Encouraging frequent resort to Department intervention to "remedy" commercial misjudgments would not be conducive to a competitive marketplace.

portion shall be computed by determining the percentage of the total usable space on a pole...that is occupied by the attachment." Id. The pole attachment regulations provide for a complaint proceeding[8] under which an attachment rate maximum can be determined through the use of data inputs from the Federal Communications Commission ("FCC") Form M (telephone company) or the Federal Energy Regulatory Commission ("FERC") Form 1 (electric company) annual reports. 220 C.M.R. § 45.04.

B. Massachusetts Formula

In the recent Cablevision case, the Department established a method to estimate the fully-allocated costs of pole attachments that is consistent with G.L. c. 166, § 25A and the related pole attachment regulations. Cablevision at 18. The Department's pole attachment formula reasonably balances the interests of subscribers of CATV services as well as the interests of consumers of utility services as required by G.L. c. 166, § 25A. Id. at 18-19. The Department's goal in adopting this pole attachment formula was to simplify the regulation of pole attachment rates as much as possible by adopting standards that rely upon publicly available data. Id. at 19. The Department's intent remains to have a simple, predictable, and expeditious procedure that will allow parties to calculate pole attachment rates without the need for Department intervention (see note 7, above). Negotiated rates are encouraged, with the parties coming to the Department for assistance only in circumstances where they fail to agree. Pole attachment complaint proceedings are not meant to be costly, full blown rate cases, but rather streamlined proceedings based on publicly available data.

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[8] Review by the Department of such a complaint can be conducted, at the election of the parties, without hearings. 220 C.M.R. § 45.06(1).

The Department's method is based on but not identical to the approach used by the FCC to regulate pole attachments in those states that have not asserted jurisdiction. Id. at 18. As we stated in Greater Media, the majority of the provisions in 220 C.M.R. § 45.00 mirror regulatory provisions enacted by the FCC. Greater Media, Inc., D.P.U. 91-218 (1992) at 28, ("Greater Media") citing 47 C.F.R. 1.1401, et seq. While we find it helpful to consider the manner in which issues raised in the instant proceeding have been addressed by the FCC, we are not bound by FCC interpretations and are free to depart from the federal method when justified on state policy grounds. See Cablevision at 18-19. We act under G.L. c. 166, § 25A, a Massachusetts statute.

IV. APPLICATION OF RATE METHOD

F. Introduction

The Department's method for calculating a fully allocated pole attachment rate involves three steps: (1) placing an average value on a utility's net investment in poles (i.e., the costs of bare poles and the costs to install the poles); (2) developing an annual carrying charge to recover the ongoing cost of poles (i.e., a utility's rate of return, depreciation, taxes, and administrative and maintenance expenses); and (3) allocating the costs among the utility and others using the pole to attach their lines and equipment. Id. at 16. In basic terms, the maximum pole attachment rate is equal to the product of the net investment per bare pole, multiplied by the carrying charge percentage, multiplied by the allocation factor. Id.

Within these three steps, the parties to the current proceeding contest the application of the following components of the Department's formula: (1) appurtenances; (2) accumulated

deferred taxes (FAS 109); (3) total distribution plant; (4) pole equivalents; and (5) allocation factor. Applying the Complainants' interpretation of the Department's pole attachment formula generates a yearly rate of $9.08 per attachment per SO pole and $4.54 per attachment per JO pole (Exh. Cable-1, at 4). Applying MECo's interpretation of the Department's pole attachment formula generates a yearly rate of $15.93 per attachment per SO pole and $7.96 per attachment per JO pole (Cable-RR-1, Att. 2, at 1).

B. Average Value of MECo Investment in Poles

1. Introduction

As an initial step in calculating a fully allocated rate, each of the parties calculates a value for MECo's net investment per bare pole. According to the Department's formula, a figure for net investment in bare pole plant is calculated by subtracting accumulated depreciation, accumulated deferred taxes, and the cost of appurtenances from gross pole investment. Cablevision at Table 1. Net investment in bare pole plant is then divided by the number of pole equivalents to generate a value for net pole investment per bare pole. Id.

All parties agree that the baseline for the calculation of net pole investment is $249,907,963, which is taken from Account 364 (Poles, Towers, Fixtures) of MECo's 1997 FERC Form 1 (Exh. MECo-5, at 206). The parties disagree, however, as to the proper amount of net pole investment to remove to account for appurtenances. The parties also disagree as to the proper methods to calculate accumulated deferred taxes and total distribution plant. Finally, the parties dispute the number of MECo's poles.

2. Appurtenances

a. Introduction

In addition to investment in poles, FERC Account 364 includes investments in items such as guys, anchors, crossarms, pole top pins, and other equipment that is attached to poles. A portion of this equipment, known as appurtenances, is of no use or benefit to the attaching parties and, therefore, needs to be deducted from Account 364 in order to determine the total net investment in poles.[9]

In Cablevision, the Department found reasonable an estimate or presumption that 15 percent of the total net pole investment represented investments in appurtenances that were not "used or useful to the attaching companies" and reduced the dollar amount of net pole investment allocated in the formula accordingly. Cablevision at 30. In Cablevision, an estimated figure proved necessary as Boston Edison did not provide a breakdown of FERC Account 364 to the subaccount level (Complainants' Brief at 33, n. 21). The Department's Order in Cablevision is silent as to whether the 15 percent presumption is a fixed adjustment or rather is a presumption which may be rebutted to reflect actual investment in appurtenances. In the instant case, MECo disputes the Complainants' attempt to alter or rebut the 15 percent presumption. Cablevision at 30.

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9 For example, crossarms and transformer mounts are used for electrical equipment only and are appropriately excluded from the calculation of net pole investment. Investments in guys and anchors, however, are not excluded because this equipment stabilizes the poles for the benefit of all attaching companies. The exact benefits of other items such as pole-top pins is a subject of debate by the parties (Complainants' Reply Brief at 9, n. 6; MECo Brief at 5).

b. Positions of the Parties

i. Complainants

The Complainants argue that the Department should adopt 15 percent as a rebuttable presumption to be used in the absence of Account 364 subaccount data for pole investments (Complainants' Brief at 34). Based on MECo's Account 364 subaccount data, the Complainants argue that using the 15 percent presumption removes too little of the net pole investment from the pole attachment rate calculation (Complainants' Brief at 32). To rebut the 15 percent presumption, the Complainants use a method that they argue is accepted by the FCC and includes bare poles plus investment in guys and anchors in net pole investment. The Complainants' method removes all amounts in the "Completed Construction Not Classified"[10] account from net pole investment as a "trade off" for the inclusion of guys and anchors in net pole investment (id.). The Complainants' method results in a reduction of 26 percent to net pole investment to account for appurtenances (id. at 34-35).

ii. MECo

MECo argues that the Department should continue to use the 15 percent presumption for two reasons. First, MECo argues that the 15 percent presumption is intended to be a constant figure which represents the "best estimate" of net pole investment attributable to appurtenances (MECo Brief at 3-4). MECo argues that using a fixed 15 percent presumption will ease the application of the pole attachment formula by avoiding the need to decide

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10 "Completed Construction Not Classified" is a FERC account that includes investment in distribution plant which has been completed and put in service, but has not yet been separated into the seven digit FERC accounts (see MECo-1; MECo-2; MECo-3; Tr. 2, at 11-14).

individually which appurtenances benefit CATV subscribers (MECo Reply Brief at 4). Alternatively, even if the Department were to consider the 15 percent presumption a rebuttable presumption, MECo argues that the Complainants incorrectly calculate their proposed appurtenance reduction (MECo Brief at 4). MECo states that the Complainants remove all "Completed Construction Not Classified" from their pole attachment rate calculation because they incorrectly assumed that this account is composed entirely of "unuseful appurtenances" (id.). MECo argues that the Complainants have erred because the "Completed Construction Not Classified" account also contains items that are useful to CATV companies such as poles, guys and anchors (id.). Assuming that the makeup of the "Completed Construction Not Classified" account is proportional to those investments already classified in Account 364, MECo argues that a more accurate appurtenance reduction would be 16.17 percent[11] (id. at 5).

c. Analysis and Findings

Both parties agree that 15 percent is the default presumption of investment in appurtenances to be used in the absence of Account 364 subaccount data (MECo Brief at 5; Complainants' Reply Brief at 8). The question that remains is whether or not this presumption is fixed or may be rebutted to substitute actual appurtenance investment data. The FCC has determined that the 15 percent figure used in its pole attachment formula is rebuttable if either party can present probative, direct evidence on the actual investment in non-pole related

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[11] MECo also argues that the 16.17 percent reduction is an overstated figure as there are devices included in the calculation that provide a benefit to CATV companies, such as pole top pins (MECo Brief at 4). MECo, therefore, encourages the Department to maintain the use of a fixed 15 percent appurtenance reduction in this case (id.).

appurtenances. 2 F.C.C. Rcd at 4390 (1987). We also find that the presumed 15 percent default adjustment is rebuttable when sufficient Account 364 subaccount data for net pole investment demonstrates that actual investment in appurtenances is different from 15 percent. If a utility tracks Account 364 pole investment data at the subaccount level, a more accurate pole attachment rate can be determined. This subaccount information is publicly available and its use will not add any measure of complexity to the Department's rate setting formula. If a utility does not track Account 364 to the subaccount level, the use of a 15 percent appurtenance presumption is appropriate.

MECo's tracking of pole investment subaccount data in Account 364 permits us to replace the 15 percent presumption with an appurtenance adjustment that is more representative of its actual investment in appurtenances. We do not, however, adopt the method employed by the Complainants to rebut this presumption. We are not convinced, based on the evidence presented, that the Complainants have followed an "FCC-approved" method to rebut the appurtenance presumption. FCC precedent includes guys and anchors in net pole investment, as it has determined that these items benefit all pole users. 2 F.C.C. Rcd at 4390 (1987).

Further, the Department finds that there is no evidence to suggest that the "Completed Construction Not Classified" account is composed of appurtenances in any different proportion than those investments contained in FERC Account 364 that have already been classified.

Therefore, "Completed Construction Not Classified" shall not be incorporated when rebutting the 15 percent presumption as this would have no impact on the result.[12] The proper method for rebutting the 15 percent appurtenance presumption is to subtract the investment in poles, guys and anchors in FERC Account 364 from the total classified utility plant in Account 364. This result is then divided by the total classified utility plant in FERC Account 364 to determine the total investment in appurtenances.

Using the detailed subaccount data in MECo's 1997 FERC Form 1 yields an appurtenance adjustment of 16.17 percent.[13] Subtracting 16.17 percent, or $23,869,225, from the net pole investment figure of $147,614,255, results in a net bare pole investment figure of $123,745,030, as shown in Table 1, below.

3. Accumulated Deferred Taxes

a. Introduction

The parties disagree as to the proper method to calculate accumulated deferred taxes for poles. While both MECo and the Complainants propose that deferred taxes be calculated by using the net of accumulated deferred taxes in FERC Accounts 190, 281, 282, and 283, the

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12 Given our presumption that the "Completed Construction Not Classified" account is composed of appurtenances in the same proportion as those investments already classified in Account 364, if "Completed Construction Not Classified" was included in the calculation, both the numerator and denominator in the appurtenance portion of the Department's formula would be increased by values that are of equivalent proportions.

13 This value is calculated by subtracting the investment in poles, guys and anchors in Account 364 ($183,557,448.78) from the total classified utility plant in Account 364, ($218,956,542.06) and dividing the result by the total classified utility plant in Account 364.

parties disagree regarding the treatment of a Financial Accounting Standard Number 109 ("FAS 109")[14] adjustment (Exhs. MECo-13, at 66; Cable-1, at 18).

b. Positions of the Parties

i. Complainants

The Complainants argue that MECo moves away from the standard calculation of accumulated deferred taxes by making a selective ratemaking adjustment for FAS 109 (Complainants' Brief at 40). Based on a guidance letter issued by FERC's chief accountant, the Complainants claim that FAS 109 should have no ratemaking consequences (Complainants' Brief at 40, citing FERC, Accounting for Income Taxes (April 23, 1993)).

Complainants argue that MECo is attempting to "cherry pick" and manipulate pole formula accounting practices, which, if allowed, will lead to more frequent efforts by parties to stray from the application of the Department's "simple, efficient and predictable formula" in future cases (id.). The Complainants argue that, if this selective FAS 109 adjustment is allowed, then other items such as construction work in progress, allowance for funds used during construction, projected changes in tax rates, and reported balances of plant in service will also have to be adjusted (Exh. Cable-1, at 19). The Complainants argue that these selective ratemaking adjustments would undermine the benefit of having a pole attachment formula that is "straightforward and self-executing" (Complainants' Brief at 42). Finally, the

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[14] According to the Complainants, FAS 109 is an accounting practice that "attempts to account for accumulated deferred income taxes in a manner that accounts for all timing differences, looking forward to the likelihood of recovery from ratepayers and changes in levels of taxation" (Complainants' Brief at 40, citing Tr. 1, at 29-30).

Complainants argue that a FAS 109 adjustment is not permitted under either the FCC or the Department's pole attachment precedent (Complainants' Brief at 40).

ii. MECo

MECo states that FAS 109 requires that temporary differences in income taxes be recorded through assets and liabilities on its balance sheet (MECo Brief at 5). Consequently, MECo argues that an equal and offsetting regulatory asset must be established so that the net effect of the FAS 109 adjustment will have no net effect on its books (id. at 5-6). According to MECo, the plant balances used to calculate the Complainants' proposed pole attachment rate do not include this equal and offsetting regulatory asset. Therefore, MECo argues that a deferred tax adjustment is necessary to ensure that FAS 109 does not affect the pole attachment rate (MECo Brief at 5-6, citing Exh. MECo-13, at 66-68; Exh. MECo-14, at 159-71).

c. Analysis and Findings

Not all utilities report FAS 109 adjustments on the FERC Form 1. In fact, in Cablevision, the FAS 109 adjustment was not at issue because Boston Edison's 1995 FERC Form 1 did not include any amounts for corresponding FAS 109 adjustments. We find that MECo's proposed FAS 109 adjustment would have a minimal impact on the resulting pole attachment rate. Because of the inconsistencies among utilities in reporting FAS 109 adjustments, and the minimal effect such adjustments would have on the ultimate pole attachment rate, we find that making this type of adjustment would improve little, if any, the accuracy of the Department's pole attachment formula. Further, we find that making selective adjustments, such as FAS 109, would be akin to conducting a full rate proceeding with every

pole attachment complaint. Making selective adjustments contravenes the important policy goal of having a straightforward, self-executing formula to determine pole attachment rates. Therefore, the Department finds that the calculation of accumulated deferred taxes shall be made without any adjustment relating to FAS 109.

4. Total Distribution Plant

a. Introduction

Total distribution plant is used to allocate a corresponding amount of accumulated depreciation to net investment in poles. All other things being equal, if we reduce the amount of total distribution plant, then the amount of accumulated deprecation will increase, resulting in a smaller net pole investment with a corresponding lower pole attachment rate.

b. Positions of the Parties

i. Complainants

The Complainants do not address this issue in their initial or reply briefs. Their petition, however, calculates total distribution plant without any adjustments.

ii. MECo

MECo argues that total distribution plant must be decreased to reflect the fact that land and land rights are not depreciable items (Exh. MECo-13, at 63-65).

c. Analysis and Findings

A proposed total distribution plant adjustment was not at issue in the Cablevision case. As stated above, incorporating selective adjustments in each pole attachment rate proceeding risks turning them into full rate cases instead of streamlined proceedings based on a simple and predictable formula. We have found that the Department's streamlined formula adequately

balances the interests of utility ratepayers and CATV subscribers and is consistent with the statute and regulations governing pole attachments. See G.L. c. 166, § 25A; 220 C.M.R. §§ 45.00 et seq.; Cablevision at 18-19.

We find that this distribution plant adjustment has but minimal effect on the ultimate pole attachment rate. Making this adjustment would add little, if any, accuracy to the Department's pole attachment formula. Instead, making this type of adjustment jeopardizes the Department's important policy goal of having a predictable, self-executing formula to determine pole attachment rates. Therefore, we find that total distribution plant found in FERC Form 1[15] with no additional adjustment, is appropriate for calculating the amount of distribution plant related to poles.

5. Calculation of Pole Equivalents

a. Introduction

Pole equivalents are the adjusted number of poles that MECo owns in full or in part.[16] The method for calculating the number of pole equivalents, which has been agreed to by the parties, involves summing the solely-owned MECo poles and adding in 50 percent of MECo's jointly-owned poles. The parties disagree, however, on two adjustments involving the types of poles that should be included when determining the number of pole equivalents.

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15 FERC Form 1 at page 207, line 69.

16 The pole count must be adjusted to account for the fact that a percentage of the poles are jointly owned by the utility and other entities.

b. Positions of the Parties

i. Complainants

The Complainants' petition incorporated 339,526 pole equivalents in their calculation of the pole attachment rate (Exh. MECo-16, at Exh. 11). The Complainants accepted MECo's adjustment to the pole count contained in their petition (335,486 pole equivalents), which removed certain poles not owned by MECo and accounted for empty locations (Complainants' Brief at 37). The Complainants dispute any further adjustments in the pole count made by MECo, arguing that MECo bears a "special responsibility" to provide accurate pole count data upon which the negotiating parties can rely (id. at 38). The Complainants state that since one of these additional adjustments was made after MECo's original response to the Complainants' petition and the other was made after the close of hearings and, thus, was not subject to cross-examination, these additional adjustments in pole count should be disallowed (id. at 38-39). Therefore, the Complainants argue that the Department should use 335,486 as the total number of pole equivalents in its calculation of the pole attachment rate (id. at 39).

ii. MECo

In its response to the Complainants' petition, MECo incorporated 335,486 pole equivalents into its calculation of the pole attachment rate (Exh. MECo-16, at 106). During the course of evidentiary hearings, MECo reduced its total pole equivalents by 6,103 to remove wood poles that are only associated with transmission and street lighting purposes and metal poles (Exh. MECo-14, at 150). MECo alleges that the removal of the transmission and street lighting poles is justified because the investment in these poles is not included in FERC Account 364 (Exh. MECo-13, at 60-61).

MECo originally argued that the metal poles should be removed from the calculation because they do not contain third party attachments (Tr. 2, at 30). However, in the course of responding to a record request, MECo discovered that there are a number of metal poles in its inventory that contain CATV attachments (RR-Cable-1). Accounting for these metal poles, MECo has added back 1,002 pole equivalents (id.). As a final result of these adjustments, MECo uses 330,385 pole equivalents when calculating its pole attachment rate (id. at Att. 1).

c. Analysis and Findings

MECo's first adjustment to pole equivalents, which removed metal poles and wood poles used for transmission and street lighting, was made well in advance of hearings and the Complainants had sufficient opportunity to explore this adjustment (see Tr. 2, at 13-29). The Department's review of MECo's 1997 FERC Form 1 indicates that wood poles used strictly for transmission and street lighting purposes are not included in FERC Account 364[17] (Exh. MECo-5). As such, we find it reasonable to reduce MECo's original pole equivalent total by 6,103 to account for metal poles and wood poles used for solely for transmission and streetlighting.

MECo's second adjustment to pole equivalents, which added back in metal poles to the pole equivalent calculation, was made after the close of hearings in response to a record request. The Department agrees that MECo bears a responsibility to provide pole count data that are complete and accurate and finds that it has done so by making this second adjustment to the pole equivalent calculation. Although we are concerned about the late timing of this

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[17] According to MECo's FERC Form 1, investment in transmission poles is included in Account 355 and investment in street lighting poles is included in Account 373 (Exh. MECo-5, at 206).

adjustment, we find that further discovery or cross-examination on this issue would not have had any impact on the accuracy of MECo's pole equivalent calculation. There is no evidence to suggest that MECo's pole counts are incorrect or inflated for the purpose of this proceeding. The most accurate pole attachment rate includes all pole types that contain or could contain third party attachments. As such, we find it reasonable to increase MECo's pole equivalent total by 1,002 to account for these poles.[18]

Based on the findings above, the Department will use 330,385 as the number of total pole equivalents in the calculation of the pole attachment rate. Using this figure for total pole equivalents and the net investment in bare pole plant of $123,745,030 results in a net investment per bare pole of $374.55, as shown in Table 1, below.

C. Annual Carrying Charge Rate

In the second step of the formula, an annual carrying charge rate must be calculated. The Department's formula calculates the total carrying charge by adding an administrative carrying charge, a maintenance carrying charge, a depreciation carrying charge, a tax carrying charge, and a rate of return. Cablevision at 32-39. The parties agree on the method used to calculate these charges. However, each party's actual carrying charge differs because they use different inputs for accumulated deferred taxes and total distribution plant, as discussed in Sections IV(3) and IV(4) above. Based on our findings regarding accumulated deferred taxes and total distribution plant discussed above, the Department finds that the correct annual carrying charge rate is 38.14 percent, as shown in Table 1, below.

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18 We note that MECo has made the appropriate adjustments to its total gross investment in pole plant (Account 364) to reflect accurately the inclusion of the metal distribution poles.

D. Cost Allocation

1. Introduction

After placing an average value on a utility's investment in poles and developing an annual carrying charge to recover the ongoing costs of poles, the third step in determining a fully allocated pole attachment rate involves calculating an "allocation factor" or "usage factor" to allocate the costs among the utility and others using the pole to attach their conductors. According to the Department's formula, the usage factor is equal to the assumed CATV attachment space divided by the usable space on a pole. Cablevision at 43-44. Usable space is defined by statute as "the total space which would be available for attachments, without regard to attachments previously made: (i) upon a pole above the lowest permissible point of attachment of a wire or a cable upon such pole which will result in compliance with any applicable law, regulation, or electrical safety code . . . ." G.L. c. 166, § 25A. The Department's formula assumes one foot per attachment for CATV attachment space and a rebuttable presumption of 13.5 feet for usable space.[19] Cablevision at 43-44.

The parties dispute whether the "neutral zone" and the top five inches of the pole should be considered usable space for pole attachment ratemaking purposes. The "neutral zone" is approximately 40 inches of clearance space on a pole between the lowest attachment in the power supply space and the highest attachment in the communication space (Exh. MECo-16, at 35-36). The power supply space, which is located at the top of the pole, is the space where the electric company attaches its conductors (Exh. MECo-7). The

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[19] 13.5 feet is the average usable space between a 35 foot pole and a 40 foot pole, which have 11 feet and 16 feet of usable space, respectively, assuming a minimum attachment height of 18 feet and a burial depth of 10 percent of the pole height plus two feet.

communication space, which is located below the power supply space and the neutral zone, is where CATV and telephone attachments typically are made, with CATV attachments usually located above telephone attachments (id.).

2. Positions of Parties

a. Complainants

The Complainants argue that the "principle of reasoned consistency" compels the Department to not change its usable space determination set out in Cablevision (Complainants' Brief at 17). The Complainants maintain that the assignment of the neutral zone to usable space is well supported by legal and factual grounds (id. at 18).

The Complainants argue that the Massachusetts pole attachment statue (G.L. c. 166, § 25A) and the Department's pole attachment regulations (220 C.M.R. §§ 45.00 et seq.) define "usable space" as "the total space which would be available for attachments... upon a pole above the lowest permissible point of attachment of a wire or cable" (id. at 18). Further, they argue that the pole attachment statute defines "attachments" as including wires and cables as well as any related device, apparatus, appliance or equipment installed upon any pole (id.). Following these definitions, the Complainants argue that the neutral zone is usable space as it is "space above the lowest permissible point of attachment that is available for attachments under Massachusetts law" (id. at 18-19).

As further support that the neutral zone is usable space, the Complainants argue that MECo actually uses the neutral zone for attachments such as streetlights, floodlights, and traffic signals (Complainants' Brief at 19, citing Exh. Cable-9; Tr. 1, at 99-101; Tr. 2, at 42). Just as MECo argues that the neutral zone benefits CATV workers by providing them with a

safety clearance space, the Complainants argue that the neutral zone exists to separate electric facilities from conductors of differing voltages and applications, providing "leg room" or safety space for electric utility employees working on electric facilities on poles (id. at 20, citing Exhs. Cable-1, at 24; Cable-2, at 293-294; Tr. 1, at 120). The Complainants also argue that the neutral zone provides additional clearance for electric conductors carrying ice loads (id.). Lastly, the Complainants allege that the neutral zone provides vertical clearance space required by electric companies to maintain minimum clearance above grade (id. at 20, citing Exh. Cable-1, at 24-25).

Based on the above, the Complainants urge the Department not to depart from our recent precedent in Cablevision and to apply the presumption of 13.5 feet of usable space in the present case (Complainants' Brief at 15-32). As an alternative, however, the Complainants argue that if MECo had correctly "rebutted" the usable space presumption according to the Department precedent using a statistical analysis or projections based on actual pole surveys, we should find that the average amount of usable space on MECo's poles is 12.82 feet (id., citing Exh. Cable-1, at 26-27).

The Complainants also assert that the principle of reasoned consistency compels the Department not to change its decision in Cablevision treating the top five inches of the pole as usable space (id. at 27-28). Like the neutral zone, the Complainants argue that the Department's assignment of pole top space to usable space is consistent with the Massachusetts statute and regulations governing poles. The Complainants state "[i]f the Department were to accept the theory animating Massachusetts Electric's argument to eliminate five inches of pole top space from usable space, the same logic necessarily would require the Department to

reduce the allocation ratio used to determine a cable operator's costs for attaching to a utility pole" (id. at 29). In other words, the Complainants argue that since CATV attachments occupy only 1.5 inches of pole space rather than the 12 inches they are allotted, a consistent application of this "actual use" theory would result in a use ratio of 1.5 inches/9 feet for cable attachments, which is less than the Department's allocation ratio of 1 foot/13.5 feet (id.). The Complainants agree that while such a result would be consistent with MECo's reasoning, it would contradict the assignment of usable space already approved by the Department and the FCC and, therefore, should not be allowed (id.).

b. MECo

MECo urges the Department to change the formula that was established in Cablevision, (or in its words, attempts to "rebut" the usable space presumption), arguing that the neutral zone should not be considered as usable space for several reasons. MECo argues that the neutral zone is necessary to maintain the proper clearance between the power supply space and the communication space, as required by the National Electrical Safety Code ("NESC"), to allow communication entities to attach to the same poles that carry electrical conductors (MECo Brief at 7-8, citing Exhs. MECo-14, at 123, 135; MECo-16, at 35-36). MECo states that its construction practices and procedures conform to the NESC as the recognized authoritative set of rules governing electric distribution systems (id. at 7, citing Exhs. MECo-16, at 35; DTE-23).

MECo contends that by maintaining the neutral zone on poles, CATV operators avoid major costs, such as duplicate pole investment, extensive worker training, and investment in equipment such as insulated bucket trucks (MECo Brief at 8). MECo argues that while it is

required to grant access to its poles, it is not required to maintain a neutral zone or worker safety space (id. at 8-9). MECo alleges that the neutral zone does not exist because of a need for street lighting space on poles, but rather it exists to benefit CATV operators by providing worker safety space, thereby reducing CATV attachment costs (id. at 9).

MECo notes that some jurisdictions, such as Maine, Kentucky and Wisconsin, have ruled that the neutral zone exists to benefit attaching parties (id. at 9-12, citing Proposed Amendment to Chap. 88, Attachments to Joint-Use Utility Poles; Determination and Allocation of Costs; Procedure (ch. 880), Docket No. 93-087 (May 13, 1993); Application of Northern States Power Co. for Authority to Increase Retail Electric Rates, Wisc. PSC, 4220-ER-14, 1981 Wisc. PUC Lexis 73, 12 (1981); Consumer Power Co., et al., 1997 Mich. PSC Lexis 26, 53 (1997)). MECo states that the FCC is currently considering a change in its position with respect to usable space and, although it is not known when the FCC will rule on this issue, MECo encourages the Department not to delay ruling that the neutral zone is not usable space (id. at 12).

Lastly, MECo states that if the Department finds that the worker safety space is usable, then MECo will amend its policies to allow CATV attachments in the safety space (MECo Reply Brief at 9). By doing so, MECo contends that the Complainants will "quickly realize" that attaching in the worker safety space is more expensive as it requires more extensive training for CATV workers to meet NESC requirements (id.).

MECo also urges the Department to reconsider its earlier ruling in Cablevision and hold that the top five inches of a pole are not usable space for pole attachment ratemaking purposes. MECo claims that attachments cannot be made to the top five inches of the pole

without causing the pole to split (MECo Brief at 6, citing Exh. MECo-16, at 14; MECo Reply Brief at 6-7). MECo argues that this space is not usable since no party can attach to the top five inches of the pole (id.).

3. Analysis and Findings

While not addressed directly in the Department's Order in Cablevision, the Department's adoption of a pole attachment rate formula that provides a use ratio of 1/13.5 feet contains within it the assignment of the "neutral zone" and pole top as usable space. The Department's formula does allow a utility to rebut the usable space presumption by presenting statistical evidence of a material difference in pole heights and clearances. By attempting to change the assignment of the "neutral zone" and pole top to unusable space, MECo has proposed to change the Department approved formula rather than rebut the usable space presumption based on statistical evidence.

In Cablevision, we stated that the "presumption of 13.5 feet may be rebutted if a company provides credible evidence, in the form of a statistical analysis or projections using actual pole surveys, that its average usable space is materially different from 13.5 feet." Cablevision at 43-44. The presumption of 13.5 feet is calculated from the average usable space between a 35 foot and 40 foot pole. The rebuttable presumption allows a distribution company whose poles may not be fairly represented by a 35 foot and 40 foot pole the opportunity to provide the Department credible evidence, such as an actual pole survey, to determine the appropriate pole height to use in the formula. This presumption of 13.5 feet, however, is calculated based on the Department's implied finding that the pole top and neutral

zone are usable space. These findings are consistent with the FCC precedent on which the Department's formula is based. See 2 FCC Rcd at 4387 (1987).

We find that the evidence presented in this case is not sufficient to warrant altering the Department's prior finding that the neutral zone and pole top are "usable" for pole attachment ratemaking purposes. The Department's current interpretation of the pole top and neutral zone as usable space is consistent with the Massachusetts statutes and regulations governing pole attachments. MECo argues that it does not use the neutral zone for attachments as a matter of common practice and, accordingly, the neutral zone is not usable space. We disagree. The record evidence shows that MECo makes use of the neutral zone for mounting street light support brackets and other related equipment (Exh. Cable-9; Tr. 2, at 42). And while MECo does not currently use the neutral zone for CATV attachments, the use of this space for attachments may become desirable or necessary in the near future as electric utilities and other companies enter the communications industry and require attachment space on increasingly crowded poles. The issue we must resolve is not whether the space is actually used, but whether it is usable. General Laws c. 166, § 25A defines "usable space" as "the total space which would be available for attachments . . . upon a pole above the lowest permissible point of attachment of a wire or cable." Further, the pole attachment statute defines "attachments" as including wires and cables as well as any related device, apparatus, appliance or equipment installed upon any pole. G.L. c. 166, § 25A. The FCC has determined that "street light brackets, transformers and the like are associated equipment" within the meaning of the provision of Section 224(d)(2) of the Telecommunications Act of 1996 (the language of which parallels the Massachusetts pole attachment statute).

See In re: Adoption of Rules for the Regulation of CATV Attachments, 77 F.C.C. 2d 187, 190 (1980). For these reasons, the Department believes that our initial determination of the neutral zone as usable space is sound.

The determination of the maximum lawful pole attachment rate is a reasonably simple and straightforward matter that the parties can ascertain for themselves without Department intervention. This will not be the case should we adopt a case-by-case allocation of usable space as requested by MECo.

The Complainants' raise the alternative of rebutting the Department's usable space presumption using MECo's actual pole survey data. MECo's data indicating the number of poles of various heights in its distribution plant used for CATV attachments allows us to accept the Complainant's alternative, consistent with Department precedent of the usable space presumption, and to replace it with a weighted average of MECo's usable space on its poles. Therefore, we find that 12.82 feet is the average usable space on MECo's poles.[20]

V. CONCLUSION

Multiplying the allocation factor found in Section IV(D), by the carrying charge rate found in Section IV(C), by the net investment per bare pole found in Section IV(B), the Department finds that the maximum lawful pole attachment rate MECo may charge the Complainants is $11.14 for SO poles and $5.57 for JO poles, as shown in Table 1, below.

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20 The average usable space of 12.82 feet is determined by subtracting the average height of a MECo pole with CATV attachments (36.47 feet) from the sum of the minimum attachment height (18 feet) and the burial depth (5.647 feet). The burial depth is determined by adding two feet to ten percent of the average pole height (Exh. Cable-1, at 26-27).

A. Interests of MECo Ratepayers and CATV Subscribers

In resolving complaints from attachers, the Department is required to balance both the interests of utility ratepayers and CATV subscribers. G.L. c.166, § 25A. The Department finds the rate shown in Table 1 is reasonable and will not impose a financial disruption on the subscribers of CATV services or MECo ratepayers.

MECo's pole attachment rates currently cost CATV subscribers approximately 22 cents per month on an average monthly CATV bill of $28.01, or 0.79 percent of the total bill (Exh. MECo-14, at attached Table). A straight pass through of the Department's rate would increase this amount to approximately 27 cents per month, or 0.95 percent of the average monthly CATV bill. While this pass through would amount to an increase of approximately 5 cents to this component of the average CATV bill, the Department finds that the overall impact on CATV subscribers will be minimal because the pole attachment cost is such a small component of a CATV bill. With respect to MECo ratepayers, since the attachment rate is increasing, the Department finds that the new rate will have no adverse effect on MECo ratepayers.

B. Effective Date of Relief

In Greater Media, in order to encourage the timely filing of complaints, we held that the new conduit rate would be effective on the date the complaint was filed, but refused to grant refunds prior to that date. Greater Media at 30. The pole attachment statute does not require any retroactive relief; however "it does confer broad authority on the department to determine reasonable rates and provide remedies to enforce them." Greater Media, Inc. v. Department of Public Utilities, 415 Mass. 409 at 419 (1993). On appeal, the Supreme Judicial

Court held that "the method that the department chose to determine and enforce its rates is consistent with this general grant of authority." Id.

In the present case, although the complaint was filed on May 20, 1998, the parties have agreed that the relief, if any, to which Complainants are found to be entitled to will relate back to February 1, 1998 (Exhs. Cable-3, at Exh. 15; MECo-16 , at Att. 1; Cable-1, at 10). By agreement of the parties, the new rates established in this Order are effective as of February 1, 1998.

VI.

TABLE 1

Net Investment Per Pole		Source
Total Gross Investment in Pole Plant	$249,907,963	FERC Form 1 Account 364
Accumulated Depreciation (Poles)	$73,893,051	(B) = (KK) * (LL)
Accumulated Deferred Taxes (Poles)	$28,400,657	(C) = (MM) * (LL)
Net Investment in Pole Plant	$147,614,255	(D) = (A) - (B) - (C)
Net Investment in Appurtenance	$23,869,225	(E) = (D) * (.1617)
Net Investment in Bare Pole Plant	$123,745,030	(F) = (D) - (E)
Number of Poles Equivalents	330,385	RR-Cable-1, Att. 1, at 1
Net Invest. Per Bare Pole	$374.55	(H) = (F) / (G)
Carrying Charges		
Administrative		
Administrative Expense	$74,522,378	FERC Form 1 Accounts 920 - 935
Total Plant in Service	$1,578,525,152	FERC Form 1, at 200
Depreciation Reserve for Total Plant in Service	$465,796,341	FERC Form 1, at 200
Accumulated Deferred Taxes	$179,390,646	FERC Form 1 Accounts 281 - 283 and 190
Net Plant in Service	$933,338,165	(M) = (J) - (K) - (L)
Administrative Carrying Charge	7.98%	(N) = (I) / (M)
Taxes		
Normalized Tax Expense	$73,597,816	FERC Form 1 Accounts 408 - 411
Total Plant in Service	$1,578,525,152	(P) = (J)
Depreciation Reserve for Total Plant in Service	$465,796,341	(Q) = (K)
Accumulated Deferred Taxes	$179,390,646	(R) = (L)
Net Plant in Service	$933,338,165	(S) = (P) - (Q) - (R)
Tax Carrying Charge	7.89%	(T) = (O) / (S)
Maintenance		
Maintenance Expense	$25,254,198	FERC Form 1 Account 593
Net Investment in Poles	$410,897,314	(V) = (FERC Accounts 364, 365, 369) - (KK) - (MM)
Maintenance Charge	6.15%	(W) = (U) / (V)
Depreciation		
Annual Depreciation for Poles	4.00%	FERC Form 1
Gross Investment in Pole Plant	$249,907,963	(Y) = (A)
Net Investment in Poles	$147,614,255	(Z) = (D)
Gross/Net Adjustment	169.30%	(AA) = (Y) / (Z)
Depreciation Carrying Charge	6.77%	(BB) = (X) * (AA)
Return		
Rate of Return	9.35%	RR-Cable-1, Att. 1 at 5
Allocation of Usable Space		
Assumed Cable Attachment Space	1	Cablevision at 43-44.
Usable Space	12.82	See supra note 19.
Usage Factor	7.80%	(FF) = (DD) / (EE)
Pole Attachment Rate		
Net Investment per Bare Pole	$374.55	(GG) = (H)
Total Carrying Charge	38.14%	(HH) = (N)+(T)+(W)+(BB)+(CC)
Usage Factor	7.80%	(II) = (FF)
Calculated Rate	$11.14	(JJ) = (GG)*(HH)*(II)

$$\frac{\Sigma \text{ FERC Accounts 364, 365, 369 * Accumulated Depreciation for Distribution}}{\text{Total Distribution Plant}} = \frac{\$695,640,883 * \$446,517,793}{\$1,510,133,227}$$

$$\frac{364}{\Sigma \text{ FERC Accounts 364, 365, 369}} = \frac{\$249,907,963}{\$695,640,883}$$

$$\frac{\Sigma \text{ FERC Accounts 364, 365, 369 * Accumulated Deferred Taxes}}{\text{Total Electric Plant}} = \frac{\$695,640,883 * \$179,390,646}{\$1,578,525,152}$$

VII. ORDER

Accordingly, after due notice, hearing and consideration, it is hereby

ORDERED: That Massachusetts Electric Company shall modify its license agreements with A-R Cable Services, Inc., A-R Cable Partners, Cablevision of Framingham, Inc., Charter Communications, Greater Worcester Cablevision, Inc., MediaOne of Massachusetts, Inc., MediaOne of Pioneer Valley, Inc., MediaOne of Southern New England, Inc., MediaOne of Western New England, Inc., MediaOne Enterprises, Inc., MediaOne of New England, Inc., Pegasus Communications and Time Warner Cable to incorporate a rate of $11.14 per attachment for solely-owned poles, and a rate of $5.57 per attachment for jointly-owned poles, and that said rates shall be effective, by agreement of the parties, as of February 1, 1998.

By Order of the Department,

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Janet Gail Besser, Chair

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James Connelly, Commissioner

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W. Robert Keating, Commissioner

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Paul B. Vasington, Commissioner

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Eugene J. Sullivan, Jr., Commissioner

Appeal as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part. Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission, or within such further time as the Commission may allow upon request filed prior to the expiration of twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. (Sec. 5, Chapter 25, G.L. Ter. Ed., as most recently amended by Chapter 485 of the Acts of 1971).